116-98

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 334. 67

ASA C. CALL, APPELLANT,

vs.

HENRY H. PALMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 9, 1882.

START of Roll

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1 Pleas in the circuit court of the United States for the central division of the district of Iowa, at a term thereof begun and holden in the United States court-house, in the city of Des Moines, in said district, before the Honorable James M. Love, one of the judges of said court, on the thirteenth day of October, A. D. 1879.

Attest: EDWARD R. MASON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the 4th day of October, 1877, a transcript from the circuit court of the State of Iowa in and for Palo Alto county, was filed in the clerk's office of the circuit court of the United States for the district of Iowa, wherein Henry H. Palmer was complainant and Asa C. Call *et al.* were defendants, which said transcript is in the words and figures following, to wit:

3 *Original Notice.*

In the Circuit Court of the State of Iowa in and for Palo Alto County. February Term, 1877.

HENRY H. PALMER
against
ASA C. CALL, W. W. JOHNSON, J. J. WILSON & CO., and FIRST NATIONAL BANK OF FORT DODGE, IOWA.

To said defendants:

You, and each of you, are hereby notified that on or before the 14th day of February, A. D. 1877, a petition of the plaintiff, Henry H. Palmer, will be filed in the office of the clerk of the circuit court of the State of Iowa in and for Palo Alto county, claiming of the defendant, Asa C. Call, the sum of eleven thousand five hundred and fifty dollars, ($11,550.00), and interest from November 1st, 1876, together with six hundred dollars, attorney's fee, on his promissory notes, and asking the foreclosure of his certain mortgage deed
4 made plaintiff to secure the payment thereof, for the following described real estate, to wit: The N. W. ¼ sec. 22, t'p 94, R. 28, sixty-four acres in the W. fr. ½ of N. W. ¼ of sec. No. 6, t'p 95, R. 28, being that part thereof lying and being situate north of the McG. & Mo. River R'y; the S. W. ¼ sec. 4, the S. W. ¼ sec. 7; one hundred and eight acres of the S. W. ¼ sec. No. 10, described as follows, to wit: The west ¾ of the N. ½ of said S. W. ¼, twenty-six acres off the west side of S. W. ¼ of the S. W. ¼ of said section, the N. E. ¼ of the S. E. ¼ of said S. W. ¼, eight acres off the north side of the N. E. ¼ of the N. E. ¼ of said S. W. ¼, and four acres off the east side of the S. W. ¼ of said S. W. ¼ of said sec. No. 10 aforesaid; the S. ½ of the N. ½ of sec. 20, and the N. E. ¼ of section No. 33, all in township No. 95, north of range No. 29; the N. E. ¼ of sec. No. 5, t'p 95, R. 30; also blocks No. 6, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 34, 36, 42, 44, 46, 48, 50, 52, 54, 56, 60, 62, 64, 66, 74, 76, 78, 80, 82, 86, 88, 94, 96, 104, 106, 108, 110, 112, 120, 122, 126, 138, 220, 221,

225, 226, 227, and east ½ of 222, all in Call's addition to the
5 town of Algona, Iowa; and all of the above-described lands and town lots being situate in Kossuth county, State of Iowa.

Also the E. ½ S. W. ¼ sec. 2, the N. ½ N. W. ¼ sec. 4, the S. E. ¼ N. W. ¼, the N. E. ¼ S. E. ¼ and W. ½ S. W. ¼ sec. 6, the N. ½ N. W. ¼, the N. E. ¼ of S. E. ¼ S. W. ¼ S. E. ¼ and N. E. ¼ S. W. ¼ sec. 8, the S. E. ¼ S. E. ¼ and the E. 29 acres of S. W. ¼ S. E. ¼ of sec. 12, the S. ½ N. W. ¼ sec. 14, the N. ½ S. E. ¼ and N. E. ¼ S. W. ¼ of sec. No. 18, all in township No. 97, R. 31 west, and S. ½ S. E. ¼ and S. E. ¼ S. W. ¼ of sec. No. 12, t'p 97, R. 32 west.

The above-described lands being situated in Palo Alto county, State of Iowa, and further asking that the lines and interests of the other defendants above named be adjudged and decreed junior and inferior to the lien of the plaintiff's said mortgage, and that unless you appear thereto and defend before noon of the first day of the February term, A. D. 1877, of said court, which will be begun and holden at Emmitsburg, in said county, on the 26th day of
6 February, A. D. 1877, default will be entered against you and judgment entered thereon.

(Signed) CRAWFORD & SOPER,
Plaintiff's Attorney.

Upon which was a return as follows, to wit:

STATE OF IOWA, }
Kossuth County, } *ss:*

The within notice came into my hands on the 29th day of January, A. D. 1877, and I certify that on the 30th day of January, A. D. 1877, I personally served the same on J. J. Wilson, of the firm of J. J. Wilson & Co. and on W. W. Johnson by personally delivering to them, and each of them, a true copy thereof, they each waiving the reading thereof; said service made in Algona t'w'p, in said county of Kossuth, State of Iowa.

I further certify that on the 10th day of February, A. D. 1877, I served the within notice on Asa C. Call by leaving a copy thereof at his residence in Algona, Kossuth county, Iowa, with Harry
7 Call, he being a member of def't's family and over 14 years of age, said defendant, Asa C. Call, not being found in my county after due search and inquiry.

(Signed) J. M. PINKERTON,
Sheriff Kossuth County, Iowa.

Service on 3 def'ts	$1 00
Mil-age	30
3 copies, 90 cts. each	2 70
Paid by plaintiff	$4 00

The First National Bank appears in the above cause and files a disclaimer of any interest or claim in or to any judgment or lien against any of the above-stated property or Asa C. Call.

Feb. 10, 1877. THE FIRST NAT. BANK OF FORT DODGE, IOWA,
By L. BLANDON, *Pres't.*

8 *Petition in Equity.*

In the Circuit Court of Palo Alto Co., in the State of Iowa.

HENRY H. PALMER, Plaintiff,
against
ASA C. CALL, W. W. JOHNSON, J. J. WILSON & COMPANY, & 1ST NATIONAL BANK OF FORT DODGE, IOWA, Defendants.

The plaintiff states:

First division.

1st. That the defendant, The 1st National Bank of Fort Dodge, Iowa, is a corporation duly organized and existing under the laws of the State of Iowa.

Par. 2nd. That on the 1st day of November, 1875, the defendant, Asa C. Call, made to the plaintiff, in writing and print, his one certain promissory note for eleven thousand dollars, together with ten interest coupon notes thereto attached, each for five hundred and fifty dollars, an- dated November 1st, 1875, said principal
9 promissory note being due and payable November 1st, 1880, and said interest coupon notes being due and payable semi-annually, on May 1st, and November 1st, in the years 1876, 1877, 1878, 1879, and 1880, respectively, one on each and every of said dates; a copy of which said promissory note for said principal sum, together with nine of said interest coupons, being the one due November 1st, 1876, and those due in the years 1877, 1878, 1879, & 1880, thereto attached, are hereunto annexed, marked Exhibits A, B, C, D, E, F, G, H, I, and K, respectively, and made a part of this petition.

Par. 3d. No copy of interest coupon No. 1, due May 1st, 1876, is not hereunto attached, for the reason that the same has been paid and surrendered to the said defendant, Call, and is not now in plaintiff's possession or under his control.

Par. 4th. That in order to secure the payment of said promissory note for $11,000, according to its tenor and terms, the de-
10 fendant, Asa C. Call, made and delivered to plaintiff the certain mortgage deed of said defendant upon the following-described real estate, to wit:

The N. W. ¼ of sec. 22, t'w'p 94 N., range No. 28; sixty-four acres in the W. fr'l half of N. W. ¼ of sec. No. 6, t'p 95, R. 28, being that part thereof lying and being situate north of the McG. & Mo. R. R. R'y; the S. W. ¼ sec. No. 4; the S. W. ¼ sec. No. 7; one hundred and eight acres of the S. W. ¼ of sec. 10, described as follows, to wit: The west ¾ of the N. ½ of said S. W. ¼; twenty-six acres off the west side of S. W. ¼ of S. W. ¼; the N. E. ¼ of S. E. ¼ of S. W. ¼; eight acres off the north side of N. E. ¼; N. E. ¼ of S. W. ¼; and four acres off the east side of S. W. ¼ of said S. W. ¼ of sec. 10 aforesaid; the S. ½ of N. ½ of sec. 20, and N. E. ¼ of sec. No. 33; all in township No. 95 north, of range No. 29 west; the N. E. ¼ sec. No. 5, t'w'p 95 N., R. No. 30.

Also blocks Nos. 6, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 34, 36, 42,

44, 46, 48, 50, 52, 54, 56, 60, 62, 64, 66, 74, 76, 78, 80, 82, 86,
11 88, 94, 96, 104, 106, 108, 110, 112, 120, 122, 126, 138, 220, 221,
225, 226, 227, and east half of block No. 222, all in Call's Addition to the town of Algona, Iowa; and all of the above-described lands and town lots, being situated in Kossuth county, State of Iowa. Also, the E. ½ S. W. ¼, sec. No. 2; the N. ½ N. W. ¼, sec. No. 4; the S. E. ¼ N. W. ¼; the N. E. ¼ of S. E. ¼ and W. ½ of S. W. ¼ of sec. 6; the N. ½ N. W. ¼, N. E. ¼ S. E. ¼, S. W. ¼ S. E. ¼, and N. E. ¼, S. W. ¼ of sec. No. 8; the S. E. ¼ S. E. ¼ and east 29 acres of S. W. ¼ S. E. ¼ of sec. No. 12; the S. ½ N. W. ¼, sec. No. 14; the N. ½ N. E. ¼, S. W. ¼ N. E. ¼ N. ½ N. W. ¼, N. ½ S. E. ¼, and N. E. ¼ S. W. of sec. No. 18, all in township No. 97, R. 31; and S. ½ S. E. ¼, and S. E. ¼ S. W. ¼, of sec. 12, t'w'p No. 97, R. 32 west, the above being situate in Palo Alto county, Iowa, a copy of which said mortgage deed is hereto attached, marked Exhibit "L," and made a part of this petition.

Par. 5th. That said mortgage deed was duly filed for record in the office of the recorder of deeds of Kossuth county, Iowa,
12 on the — day of ——, 1875, at 10 o'clock m., and duly recorded in book — of mortgages, on pages —, records of Kossuth county, Iowa.

Par. 6th. That said mortgage deed was duly filed for record in the office of the recorder of deeds of Palo Alto county, Iowa, on the 4th day of February, 1875, at 10 o'clock p. m., and duly recorded in book "A" of mortgages, on pages 456, records of Palo Alto county, Iowa.

Par. 7th. That no part of said note for said principal sum has been paid.

Par. 8th. That by the terms of said promissory note for said principal sum of $11,000.00 above mentioned and described it is expressly agreed, stipulated, and provided that "if default be made in the payment of any interest note or any part thereof for the space of ten days after the same becomes due and payable, then said principal and interest notes shall, at the option of the said Henry H. Palmer or his assignees, become at once due and payable without further notice." The plaintiff, Henry H. Palmer,
13 alleges that default has been made in the payment of interest note No. 2, marked Exhibit "K," for the space of ten days; that said interest note No. 2, Exhibit "K," for $550.00, was due and payable November 1st, 1876, and that the same has not been paid or any part thereof, and that plaintiff elects to declare, and hereby declares, both principal and interest notes due and payable.

Par. 9th. That the defendants, W. W. Johnson, J. J. Wilson & Co., and First National Bank of Ft. Dodge, Iowa, have, or claim to have, a lien or interest in said real estate, but the plaintiff alleges that whatever lien or interest the said defendants may have in said mortgaged premises, the same is junior and inferior to the lien of the plaintiff's aforesaid mortgage.

Par. 10. That said mortgage provides that in case it becomes necessary to foreclose said mortgage, a reasonable fee shall be

allowed by the court for collecting the debt so secured, and that such reasonable fee is the sum of six hundred dollars.

14 The plaintiff further states:

Division Second.

Par. 1st. That on or about the 1st day of November, 1875, the defendant, Asa C. Call, made to the plaintiff, in writing, his certain promissory note for five hundred and fifty dollars, dated Nov. 1st, 1875, and due November 1st, 1876, a copy whereof is hereunto attached, marked Exhibit "K," and made a part of this petition.

Par. 2d. That in order to secure the payment of said note the said defendant made, executed, and delivered to plaintiff the certain mortgage deed of said defendant upon the real estate described in par. 4th of the first division of this petition, a copy of which said mortgage deed is hereunto attached and marked Exhibit "L," and made a part of this petition.

Par. 3d. That said mortgage was duly filed for record in the office of the recorder of deeds of Kossuth county, Iowa, on the —
15 day of ——, 1875, at — o'clock m., and duly recorded in book — of mortgages, records of said county.

Par. 4. That said mortgage was duly filed for record in the office of the recorder of deeds of Palo Alto county, Iowa, on the 4 day of February, 1875, at 1 o'clock p. m., and duly recorded in book "A" of mortgages on pages 456, records of said county.

Par. 5. That no part of said note has been paid.

Par. 6. That the defendants, W. W. Johnson, J. J. Wilson & Co., and 1st National Bank of Fort Dodge, Iowa, have or claim a lien or interest in said real estate, but the plaintiff alleges that whatever lien or interest said last-named defendant may have in said premises the same is junior and inferior to the lien of the plaintiff's aforesaid mortgage.

The plaintiff further states:

Division Third.

Par. 1. That on the 1st day of November, 1875, the de-
16 fendant, Asa C. Call, made to plaintiff the promissory note mentioned and referred to in the first paragraph of the second division hereof.

Par. 2. That said promissory note was by its terms due Nov. 1st, 1876, and payable at the bank of Gilman, Son & Co. in the city of New York.

Par. 3. That said promissory note was duly presented for payment at the bank of Gilman & Son & Co. in New York on Nov. 1st, 1876, and payment thereof duly requested, and the same refused; whereupon, at the request of the holder, Gilman, Son & Co., the same was duly protested against the maker and endorsers for the amount due thereon, with cost and expenses.

Par. 4. That by reason of the non-payment thereof as aforesaid plaintiff was compelled to take up said note and pay the costs and

expenses of said protest, amounting to the sum of one and $\frac{21}{100}$ dollars, on or about November 1st, 1876.

17 Wherefore plaintiff demands judgment against said Asa C. Call for the said sum of eleven thousand five hundred and fifty-one and $\frac{21}{100}$ dollars, with interest thereon from Nov. 1st, 1876, at the rate of ten per cent. per annum, and costs, together with six hundred dollars attorney's fees; that said mortgage be foreclosed; that the liens and interests of the said W. W. Johnson, J. J. Wilson & Co., and 1st National Bank of Fort Dodge, Iowa, be decreed to be junior and inferior to the lien of the plaintiff's said mortgage. That the equity of redemption of all of said defendants be forever barred and foreclosed, and that a special execution issue for the sale of said mortgaged premises, or so much thereof as shall be necessary to satisfy the said judgment, with interest, costs, and attorney's fees.

(Signed) CROWFORD & SOPER,
Plaintiff's Attorneys.

Filed February 14th, 1877.

STATE OF IOWA, *Palo Alto County,* } *ss:*

18 I, E. B. Soper, being duly sworn, depose and say: That I am one of the plaintiff's attorneys; that the promissory notes and mortgage mentioned and referred to in the foregoing petition are in my possession as such attorney; that plaintiff is a non-resident of the State of Iowa, and not present to make this affidavit; that I have read the foregoing petition, and know its contents, and that the matters and things therein contained and the facts therein alleged are true, as I believe.

E. B. SOPER.

Sworn to before me and subscribed in my presence by E. B. Soper, this 9th day of Febr ary, 1877.

[SEAL.] T. R. CRAWFORD,
Notary Public in and for Palo Alto Co., Iowa.

EXHIBIT "A."

$11,000.00. EMMITSBURG, IOWA, *Nov. 1st*, 1875.

On the first day of November, A. D. 1880, for value received, I promise to pay to the order of Henry H. Palmer, the princi-

19 pal sum of eleven thousand dollars, with interest thereon at the rate of ten per cent. per annum from November 1st, 1875, until maturity, payable semi-annually according to the tenor of ten interest notes, each for five hundred and fifty dollars, bearing even date herewith, both principal and interest notes payable at the banking house of Gilman, Son & Co., New York, and if default be made in the payment of any interest note, or any portion thereof, for the space of ten days after the same becomes due and payable, then said principal and interest notes shall, at the option of the said Henry H. Palmer, or his assigns, become at once due and payable without

further notice. It is expressly agreed and declared that these notes are made and executed under and are in all respects to be construed by the laws of the State of Iowa, and are secured by mortgage of even date herewith duly stamped and recorded.

This note bears interest at ten per cent. after maturity.

(Signed) ASA C. CALL.

20 EXHIBIT "B."

EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 10.

(Signed) ASA C. CALL.

EXHIBIT C.

$550.00. EMMITSBURG, IOWA, *Nov. 1st*, 1875.

On the 1st day of May, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 9.

(Signed) ASA C. CALL.

EXHIBIT "D."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1879, for value received, I
21 promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 8.

(Signed) ASA C. CALL.

EXHIBIT "E."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1879, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 7.

(Signed) ASA C. CALL.

EXHIBIT "F."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1878, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dol-

expenses of said protest, amounting to the sum of one and $\frac{21}{100}$ dollars, on or about November 1st, 1876.

17 Wherefore plaintiff demands judgment against said Asa C. Call for the said sum of eleven thousand five hundred and fifty-one and $\frac{21}{100}$ dollars, with interest thereon from Nov. 1st, 1876, at the rate of ten per cent. per annum, and costs, together with six hundred dollars attorney's fees; that said mortgage be foreclosed; that the liens and interests of the said W. W. Johnson, J. J. Wilson & Co., and 1st National Bank of Fort Dodge, Iowa, be decreed to be junior and inferior to the lien of the plaintiff's said mortgage. That the equity of redemption of all of said defendants be forever barred and foreclosed, and that a special execution issue for the sale of said mortgaged premises, or so much thereof as shall be necessary to satisfy the said judgment, with interest, costs, and attorney's fees.

(Signed) CROWFORD & SOPER,
Plaintiff's Attorneys.

Filed February 14th, 1877.

STATE OF IOWA, }
Palo Alto County, } *ss:*

18 I, E. B. Soper, being duly sworn, depose and say: That I am one of the plaintiff's attorneys; that the promissory notes and mortgage mentioned and referred to in the foregoing petition are in my possession as such attorney; that plaintiff is a non-resident of the State of Iowa, and not present to make this affidavit; that I have read the foregoing petition, and know its contents, and that the matters and things therein contained and the facts therein alleged are true, as I believe.

E. B. SOPER.

Sworn to before me and subscribed in my presence by E. B. Soper, this 9th day of February, 1877.

[SEAL.] T. R. CRAWFORD,
Notary Public in and for Palo Alto Co., Iowa.

EXHIBIT "A."

$11,000.00. EMMITSBURG, IOWA, *Nov. 1st*, 1875.

On the first day of November, A. D. 1880, for value received, I promise to pay to the order of Henry H. Palmer, the princi-

19 pal sum of eleven thousand dollars, with interest thereon at the rate of ten per cent. per annum from November 1st, 1875, until maturity, payable semi-annually according to the tenor of ten interest notes, each for five hundred and fifty dollars, bearing even date herewith, both principal and interest notes payable at the banking house of Gilman, Son & Co., New York, and if default be made in the payment of any interest note, or any portion thereof, for the space of ten days after the same becomes due and payable, then said principal and interest notes shall, at the option of the said Henry H. Palmer, or his assigns, become at once due and payable without

further notice. It is expressly agreed and declared that these notes are made and executed under and are in all respects to be construed by the laws of the State of Iowa, and are secured by mortgage of even date herewith duly stamped and recorded.

This note bears interest at ten per cent. after maturity.

(Signed) ASA C. CALL.

20 EXHIBIT "B."

EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 10.

(Signed) ASA C. CALL.

EXHIBIT C.

$550.00. EMMITSBURG, IOWA, *Nov. 1st*, 1875.

On the 1st day of May, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 9.

(Signed) ASA C. CALL.

EXHIBIT "D."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1879, for value received, I
21 promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 8.

(Signed) ASA C. CALL.

EXHIBIT "E."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1879, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 7.

(Signed) ASA C. CALL.

EXHIBIT "F."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1878, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dol-

lars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date
22 herewith. This note bears interest at ten per cent. after due. No. 6.

(Signed) ASA C. CALL.

EXHIBIT "G."

$550.00. EMMITSBURG, IOWA, *November* 1, 1875.

On the first day of May, 1878, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 5.

(Signed) ASA C. CALL.

EXHIBIT "H."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1877, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 4.

(Signed) ASA C. CALL.

23 EXHIBIT "I."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1877, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 3.

(Signed) ASA C. CALL.

EXHIBIT "K."

$550.00. EMMITSBURG, IOWA, *November 1st*, 1875.

On the 1st day of November, 1876, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due. No. 2.

(Signed) ASA C. CALL.

Know all men by these presents that Asa C. Call and his
24 wife, Sarah Call, of Kossuth county and State of Iowa, in consideration of the sum of eleven thousand dollars in hand paid by Henry H. Palmer, of Middlesex county and State of New Jersey, do hereby sell and convey unto the said Henry H. Palmer the following-described premises, situated in the counties of Kossuth and Palo Alto and State of Iowa, to wit: The northwest quarter of section twenty-two (22), township ninety-four (94) north,

range twenty-eight (28) west; also sixty-four (64) acres in the west fractional half of the northwest quarter of section six (6), township ninety-five (95) north, range twenty-eight (28) west, it being that part of said west fractional half of the northwest quarter situate and being north of the McGregor and Missouri River railway, the southwest quarter of section four (4), the southwest quarter of section seven (7), one hundred and eight (108) acres off the southwest quarter of section ten (10), described as follows:

The west three-fourths (¾) of the north half of said south-
25 west quarter, twenty-six acres off the west side of the southwest quarter of the southwest quarter, the northeast quarter of the southeast quarter of the southwest quarter, eight (8) acres off the north side of the northeast quarter of the northeast quarter of said southwest quarter, and four (4) acres off the east side of the southwest quarter of said southwest quarter, the south half of the north half of section twenty (20), and the northeast quarter of section thirty-three (33), all in township ninety-five (95), range twenty-nine (29); the northeast quarter of section five (5), township ninety-five (95), range thirty (30) west.

Also blocks six (6), ten (10), twelve (12), fourteen (14), sixteeen (16), eighteen (18), twenty (20), twenty-two (22), twenty-four (24), twenty-eight (28), thirty (30), thirty-four (34), thirty-six (36), forty-two (42), forty-four (44), forty-six (46), forty-eight (48), fifty (50), fifty-two (52), fifty-four (54), fifty-six (56), sixty (60), sixty-two (62), sixty-four (64), sixty-six (66), seventy-four (74), seventy-six (76), seventy-eight (78), eighty (80), eighty-two (82), eighty-six (86),
26 eighty-eight (88), ninety-four (94), ninety-six (96), one hundred and four (104), one hundred and six (106), one hundred and eight (108), one hundred and ten (110), one hundred and twelve (112), one hundred and twenty (120), one hundred and twenty-two (122), one hundred and twenty-six (126), one hundred and thirty-eight (138), two hundred and twenty (220), two hundred and twenty-one (221), the east half of two hundred and twenty-two (E. ½ 222), two hundred and twenty-five (225), two hundred & twenty-six (226), two hundred and twenty-seven (227), in Call's Addition to Algona. The above-described lands situated in the county of Kossuth, Iowa.

Also the east half of the southwest quarter of section two (2), the north half of the northwest fractional quarter of section four (4), the southeast quarter of the northwest quarter, the northeast quarter of the southeast quarter, and the west half of the southwest quarter of section six (6), the north half of the northwest quarter, the
27 northeast quarter of the southeast quarter, the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section eight (8), the southeast quarter of the southeast quarter and twenty-nine (29) acres off the east side of the southwest quarter of the southeast quarter of section twelve (12), the south half of the northwest quarter of section fourteen (14), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the west half of the northwest quarter, the north half of the southeast quarter, and the northeast quarter of the southwest quarter of section eighteen (18), all in township ninety-seven

(97) north, range thirty-one (31); also the south half of the southeast quarter and the southeast quarter of the southwest quarter of section twelve (12), township ninety-seven (97) north, range thirty-two (32) west of the fifth (5th) P. M., in Palo Alto county, Iowa, and all containing two thousand three hundred and fifty (2,350) acres, more or less; and we hereby covenant with the said Henry
28 H. Palmer that we hold said premises by title in fee-simple; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever, and we do covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever, and the said parties each hereby relinquishes all right of dower and all contingent or property rights in and to the above-described premises, the intention being to convey hereby an absolute title in fee-simple, including all the rights of homestead; to have and to hold the premises above described, with all the appurtenances thereunto belonging, unto the said Henry H. Palmer, and to his heirs and assigns, forever: Provided always, and these presents are upon this express condition, that if the said Asa C. Call, or his heirs, executors, or administrators, shall pay or cause to be paid to the said Henry H. Palmer, or his executors, adminis-
29 trators, or assigns, the sum of eleven thousand dollars on the first day of November, 1880;

Five hundred and fifty dollars on the first day of May, 1876;

Five hundred and fifty dollars on the first day of November, 1876;

Five hundred and fifty dollars on the first day of May, 1877;

Five hundred and fifty dollars on the first day of November, 1877;

Five hundred and fifty dollars on the first day of May, 1878;

Five hundred and fifty dollars on the first day of November, 1878;

Five hundred and fifty dollars on the first day of May, 1879;

Five hundred and fifty dollars on the first day of November, 1879;

Five hundred and fifty dollars on the first day of May, 1880;

Five hundred and fifty dollars on the first day of November, 1880;

—with interest thereon at the rate of ten per cent. per annum, according to the tenor and effect of the eleven promissory notes of the said Asa C. Call, payable to Henry H. Palmer, bearing even date herewith, then these presents to be void; otherwise
30 to remain in full force; and it is further agreed that if default should be made in payment of any said notes so secured, or any part thereof, as the same matures for the space of ten days, or if the party of the first part shall allow the taxes or any other public rates or assessments on the above-described property, or any part thereof, to become delinquent, or shall fail to insure said premises against fire in some responsible insurance company designated by the mortgagee herein, for the sum of — dollars, or shall do any act whereby the value of said mortgaged property shall be im-

paired, then, upon the happening of any one of said contingencies, the whole amount herein secured shall be and become due, and the mortgagee, his heirs or assigns, may proceed at once to foreclose this mortgage and sell the mortgaged property, or so much thereof as may be necessary to satisfy said debt, interest, and costs, and all taxes, public rates, and assessments that may be due thereon,
31 together with a reasonable attorney's fee, for the debt so secured, which shall be included in judgment in such foreclosure case; and it is further expressly agreed and declared that this mortgage and the notes secured by the same are made and executed in accordance with the laws of the State of Iowa, and are to be in all respects construed thereby.

In witness whereof, we have hereunto set our hands and seals, this first day of November, A. D. 1875.

ASA C. CALL. [SEAL.]
SARAH CALL. [SEAL.]

STATE OF IOWA, } ss:
Kossuth Co., }

On this ninetee-th day of November, A. D. 1875, before me, George E. Clarke, a notary public in and for said county, personally came Asa C. Call & his wife, Sarah Call, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

32 In testimony whereof, I have hereunto set my hand and affixed my official seal, at Algona, Iowa, on the day and date last above written.

[SEAL.] GEORGE E. CLARKE,
Notary Public.

33 *Motion for Security for Costs. Filed Feb'y 27th*, 1877.

In the Circuit Court of the State of Iowa, within and for Palo Alto County. February Term, 1877.

HENRY H. PALMER *vs.* ASA C. CALL.

The defendant moves the court to require the plaintiff to give security for costs of this action for the reason shown in the annexed affidavit.

GEORGE E. CLARKE & J. H. HAWKINS,
Def't's Att'ys.

STATE OF IOWA, *Kossuth County:*

I, Asa C. Call, being duly sworn, depose and say: That I am the defendant in the above-entitled action; that I have a good defense to the whole, or in part, of said action, and that the plaintiff is a non-resident of the State of Iowa.

ASA C. CALL.

Sworn to before me and subscribed in my presence by the said Asa C. Call, this 24th day of February, A. D. 1877.

[SEAL.] J. H. HAWKINS,
Notary Public.

34 *Disclaimer of Johnson.*

In the Circuit Court of Palo Alto County, Iowa. Feb. Term, 1876.

HENRY H. PALMER *vs.* ASA C. CALL, W. W. JOHNSON *et al.*

The above-named W. W. Johnson appears in the above cause and files this his disclaimer of any interest, lien, or claim in or to any of the real estate described in plaintiff's petition filed herein, or of any claim against Asa C. Call.

W. W. JOHNSON,
By GEORGE E. CLARKE,
His Att'y.

Bond for Costs. Filed Feb. 28th, 1877.

In Circuit Court, Palo Alto County, Iowa.

H. H. PALMER *vs.* A. C. CALL *et al.*

Know all men by these presents, that we, H. H. Palmer, as principal, and J. D. Hall and David Grier, sureties, are held and
35 firmly bound unto Asa C. Call in the sum of three hundred dollars ($300.00), lawful money of the United States, well and truly to be paid to the said A. C. Call, his heirs, executors, and assigns.

The condition of the above obligation is such, that whereas on the — of February, 1877, the said H. H. Palmer commenced an action in the circuit court against the said A. C. Call; and whereas the said plaintiff is a non-resident of the State, and the said defendant having filed his affidavit in said action, stating that he has a good defense thereto:

Now, if the said H. H. Palmer shall well and truly pay all costs which may accrue in said action in said court, or in any other court to which the same may be carried, either to the said defendant or to the officers of the court, then this obligation to be void; otherwise, to remain in full force and virtue.

Dated February 28, 1877.

H. H. PALMER,
By CRAWFORD & SOPER, *Att'ys.*
J. D. HALL.
DAVID GRIER.

Filed March 1st, A. D. 1877.

36 STATE OF IOWA, } *ss:*
Palo Alto County, }

We, J. D. Hall & David Grier, sureties above named, do each for himself, after being first duly sworn, depose and say: That we are residents of the State of Iowa and worth the sum of six hundred

dollars beyond the amount of our debts, and have property liable to execution within this State equal to the sum above named.

J. D. HALL.
DAVID GRIER.

Sworn to before me and subscribed in my presence by J. D. Hall and David Grier, this 28th day of February, 1877.

[SEAL.] A. L. ORMSBY,
Notary Public.

37 *Motion to Strike, &c.*

In the Circuit Court of Palo Alto Co., Iowa. February Term, 1877.

HENRY H. PALMER *vs.* ASA C. CALL.

The defendant, Asa C. Call, moves to strike from plaintiff's petition Exhibits B, C, D, E, F, G, H, and I, for the reason the same are immaterial.

2nd. The same appear to be coupon interest notes, and are not yet due.

3rd. The plaintiff shows affirmatively that the same are given without any consideration.

GEORGE E. CLARKE,
Att'y for Def't Call.

Filed March 2d, 1877.

38 *Motion.*

In Circuit Court Palo Alto Co.

H. H. PALMER *vs.* A. C. CALL *et al.*

Now comes the plaintiff and moves the court—

1st. To strike from the files motion filed by def't to strike exhibits from petition, for the reason that the same is frivilous and filed for the purposes of delay.

2nd. Moves the court for default and judgment herein for want of answer.

CRAWFORD & SOPER,
Plff's Att'y.

Filed March 3d, 1877.

39 *Answer of Asa C. Call.*

In the Circuit Court of Palo Alto Co., Iowa. February Term, 1877.

HENRY H. PALMER *vs.* ASA C. CALL *et al.*

Div. 1st. The defendant, Asa C. Call, for his answer herein, says he admits the allegations in paragraphs 2, 3, 4, 5, 6, 7, & 8, in div. 1st of plaintiff's petition.

He denies the allegations contained in par. 1st of said petition, & says that said 1st National Bank of Fort Dodge, Iowa, is organized under the laws of the United States.

He denies that $600 is a reasonable att'y fee, as stated in para-

graph 10th of said petition, or that the plaintiff is entitled to any other sum as att'y fee herein. As to the allegations contained in paragraph 9 of said petition he has neither knowledge nor information sufficient to form a belief.

He admits the allegation contained [in] par-. 1, 2, 3, 4, & 5
40 of the 2d division of said petition; as to the allegations contained in par. 6 of said 2d division, and the allegations contained in division 3d thereof he has neither knowledge nor information sufficient to form a belief.

2nd. And for further answer & defense plaintiff states that Burnham, Ormsby & Co. are a copartnership, doing business at Emmetsburg, Iowa, composed of E. S. & S. L. Ormsby, A. C. Burnham, and others, if any, to defendant unknown.

That on or about the 18th day of November, 1872, defendant borrowed of A. C. Burnham, by and through said Burnham, Ormsby & Co., the sum of eight thousand dollars, and gave therefor his note for ten thousand dollars, to be due and payable on the 1st day of November, 1875, said note bearing interest at the rate of ten per cent., payable semi-annually, and gave to secure said note a certain mortgage deed on a portion — the lands described in paragraph 4 in plaintiff's petition.

41 That in order to evade & avoid the defense of usury and to illegally collect the entire sum of ten thousand dollars, a transfer was made of said note and mortgage to the plaintiff herein, but plaintiff avers that said transfer was colorable only, & for said purposes only, being made with full knowledge of all the facts hereinbefore set forth. That the said Burnham, Ormsby & Co., as the agents of said plaintiff, on the 1st day of November, 1875, took from this defendant the notes and mortgage set up in plaintiff's petition & sued on herein, and that the said note of ten thousand dollars was the sole and only consideration therefor.

Defendant further states that said note, by its terms, is not due until the 1st day of November, 1880, and that no notice was ever served on defendant of an election to hold or declare the whole amount of said note due at once prior to the commencement of this action.

That about the first day of February, 1877, this defendant
42 made a verbal contract with plaintiff by and through his said agents, Burnham, Ormsby & Co., by the terms of which it was agreed that defendant should pay to said agents the sum of fifty dollars then, and within a reasonable time thereafter the sum of one hundred & fifty-five dollars, to apply on certain interest on the unpaid interest then due, and as a consideration for an extension of time on said note and interest then due. the plaintiff agreed not to bring said suit at the present time, but to carry the said entire amount for six months longer before suit, and plaintiff further avers that he so paid $500 within said reasonable time, so agreed upon; he was willing & ready, & now is ready & willing, to pay said sum of one hundred & fifty-five dollars. That the plaintiff utterly disregarded said verbal agreement at once on the day fol-

lowing said agreement, &, in defiance of the same, commenced this suit, still holding the fifty dollars so received as aforesaid.

43 Wherefore defendant asks that said petition be dismissed at plaintiff's cost.

GEORGE E. CLARKE,
Def't Call's Att'y.

STATE OF IOWA, } ss:
Kossuth County, }

Asa C. Call, being duly sworn, says he is defendant herein; that he has heard the foregoing answer read and knows the contents thereof, and the facts and allegations therein contained are true as he verily believes.

ASA C. HALL.

Subscribed & sworn to before me by Asa C. Call.
[SEAL.] J. H. HAWKINS,
Notary Public.

Feb. 24th, 1877.
Filed March 5th, 1877.

Interrogations to be Answered by the Plaintiff, Henry H. Palmer, at the time of filing his Reply herein.

1st. State your place of residence, your business, & generally your business relations & transactions with Burnham, Ormsby & Co., of Emmetsburg, Iowa, and with A. C. Burnham.

44 2nd. When was the note of Asa C. Call for $10,000, dated November 1st, 1872, and the mortgage securing the same, transferred to you?

3rd. What was the consideration actually paid by you to said Burnham, & how paid, and when, for said note and mortgage?

4th. Were your negotiations therefor concluded in person, by letter, or through an agent? If personally, state particularly how you came to take the same, and what was said to you in relation thereto, and the whole matter fully; if by letter, annex all correspondence in relation thereto to your answer to this interrogatory, both letters received and copies of any written by you, if you have them, and if not, state truly and fully the contents thereof; if by agent, give said agent's name & residence, and state all that passed fully between you and said agent, or if the same was by correspondence; disclose the same fully.

5th. Did you not know, as a matter of fact, that said note was given for a loan of $8,000 only, and tainted with usury?

45 6th. How long have Burnham, Ormsby & Co. or A. C. Burnham been your agents?

7th. Did you, prior to the commencement of this action, direct the commencement of the same, or forward to your agents any notice that you elected to hold the whole amount of said note due at once? If so, when, & annex a copy thereof to your answer hereto.

8th. Annex hereto all correspondence had by you with Burnham, Ormsby & Co. and S. C. Burnham since Nov. 1st, 1872, both letters

received by you from them, or either of them, and copies written by you to them, or either of them, and if you have not preserved copies, state truly and fully the contents thereof.

9th. State fully the consideration for the note and mortgage in suit.

(Signed) GEORGE E. CLARKE,
Att'y for Def't Call.

STATE OF IOWA, } ss:
Kossuth County, }

Asa L. Call, being duly sworn, says he is one of the defend-
46 ants & the real party in interest in the defense herein; that he verily believes the subject of all the foregoing interrogatories is *is* in the personal knowledge of the plaintiff, & his answers thereto, if truly made, will sustain the entire defense set up by defendant herein; that he believes the answers thereto will prove that the original indebtedness sued on herein was $8,000 only, and that defendant, in consideration thereof, gave his note for $10,000, and that plaintiff knew that fact at the time of the transfer of said note to him; that said transfer was colorable only without consideration for purposes of collection to avoid the plea of usury; that said note was the only consideration for the note in suit; that defendant has not filed the foregoing interrogatories for the purposes of delay, but in order to reach the bottom of the whole transaction, & show the real facts in the case; he further expects to prove by said answers that H. H. Palmer did not direct the bringing of this suit,
47 and has never elected to declare the whole amount of the note sued herein due.

ASA C. CALL.

Subscribed and sworn to before me by Asa C. Call, Feb. 28, 1877.
JNO. N. WEAVER,
Circuit Judge 14th Jud. Dist., Iowa.

48 In the Circuit Court of Palo Alto Co., State of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL *et al.*

Interrogatories to be Answered by the Plaintiff, Henry H. Palmer, at the time of filing his Reply herein.

Int. 1. State your place of residence, your business, and generally your business relations and transactions with Burnham, Ormsby & Co., of Emmetsburg, Iowa, and with A. C. Burnham.

Answer. I reside in New Brunswick, N. J.; my business is pres'd't of a fire insurance company, and a chairman of finance committee of the N. B. Savings Institution. My business relations and transactions with Burnham, Ormsby & Co. and A. C. Burnham have been the loaning of money through them as brokers for myself and others.

49 Int. 2nd. When was the note of Asa C. Call for $10,000.00, dated Nov. 1, 1872, and the mortgage securing the same transferred to you?

Answer. September seventeenth (17), 1873.

Int. 3d. What was the consideration actually paid by you to said Burnham, and how paid, and when, for said note and mortgage?

Answer. The consideration actually paid by me to said Burnham was the sum of ten thousand dollars ($10,000.00) in cash, on September seventeenth (17), 1873, together with the accrued interest thereon.

Int. 4th. Were your negotiations therefor concluded in person, by letter, or through an agent; if personally, state particularly how you came to take the same, and what was said to you in relation thereto, and the whole matter fully; if by letter, annex all correspondence in relation thereto to your answer to this interrogatory,

50 both letters received and copies of any written by you, if you have them, and if not, state fully and truly the contents thereof; if by agent, give said agent's name and residence, and state all that passed fully between you and said agent, or if the same was by correspondence, disclose the same fully.

Answer. In person; A. C. Burnham came to my office & stated that he had a note for $10,000.00, secured by mortgage, which he desired to dispose of, and recommended the security. I had money to invest, and I bought it then & there, and paid therefor its face and accrued interest in cash.

Int. 5th. Did you not know as a matter of fact that said note was given for a loan of $8,000.00 only, and tainted with usury?

Answer. I did not.

Int. 6th. How long have Burnham, Ormsby & Co. or A. C. Burnham been your agents?

51 Answer. They are not my agents; I have sent them money as brokers, to loan for myself and others, and they have been my correspondents for matters of business in their locality, but nothing further. A. C. Burnham 6 years, Burnham, Ormsby & Co. for about 4 years, have thus acted for me.

Int. 7th. Did you prior to the commencement of this action direct the commencement of the same, or forward to your agents any notice that you elected to hold the whole amount of said note due at once; if so, when, and annex a copy thereof to your answer hereto?

Answer. When default was made in payment of interest I sent the note and mortgage to Burnham, Ormsby & Co., with instruction to place the same in the hands of an attorney for collection by foreclosure. I have no copy of the letter. I think it was about the last of January, 1877.

52 Int. 8th. Annex hereto all correspondence had by you with Burnham, Ormsby & Co. and A. C. Burnham, since Nov. 1st, 1872, both letters received by you from them, or either of them, and copies written by you to them, or either of them, and if you have not preserved copies, state truly and fully the contents thereof.

Answer. I cannot do it. There was no correspondence between us about this matter, nor in any manner connected with this case, nor the defense interposed by defendant Call, nor the subject-matter

thereof, until after the answer was filed and until after the February term of this court.

Int. 9th. State fully the consideration for the note and mortgage in suit.

Answer. The consideration for the mortgage in suit was one note of defendant, A. C. Call, for the sum of eleven thousand dollars ($11,000) principal, and all unpaid interest (or coupons) on the same, and balance in cash, $500.00.

HENRY H. PALMER.

53 STATE OF NEW JERSEY, *County of Middlesex:*

Sworn to before me and subscribed in my presence by the said Henry H. Palmer, this 14th day of June, 1877, at New Brunswick, N. J., county of Middlesex.

[SEAL.] B. BONNEY,
Notary Public.

54 *Reply.*

In the Circuit Court of the State of Iowa in and for Palo Alto Co.

HENRY H. PALMER *vs.* ASA C. CALL & others.

The plaintiff, for reply to the 2nd division of the answer of the defendant, Asa C. Call, filed herein, states:

Par. 1. That on or about the 18th day of November, 1872, one Mrs. Maggie J. Davison loaned to the defendant, Asa C. Call, through his agents, the said Burnham, Ormsby & Co., the sum of ten thousand dollars; that for the convenience of the said Mrs. Davison and at her request the notes therefor and the mortgage securing the same were made to one A. C. Burnham as trustee and in trust for the said Mrs. Davison and for her use and benefit solely; that the said ten thousand dollars was delivered to the said Burnham by the said Mrs. Davison to be loaned at a legal rate of interest, to
55 wit, ten per cent. per annum, and no more; that neither the said Burnham, Ormsby & Co. nor the said A. C. Burnham had any authority to loan said money and charge & receive therefor a bonus for themselves, nor loan the same otherwise than at a legal rate of interest; that the said Mr-. Davison had no knowledge that any bonus had been charged therefor or received by the said Burnham, Ormsby & Co. or A. C. Burnham, or that the same had been loaned for other or greater rate of interest than ten per cent. per annum, nor did the said Mrs. Davison, directly or indirectly, receive any bonus therefor or more than interest thereon at the rate of ten per cent. per annum.

Par. 2. That on or about the 17th day of September, 1873, this plaintiff purchased of said Mrs. Davison, through her trustee, A. C. Burnham, the notes and mortgage hereinbefore mentioned, without any notice or knowledge that the said Burnham, Ormsby & Co. or A. C. Burnham had received any bonus or sum of money
56 whatever for negotiating said loan, and paid therefor to the said Mrs. Davison, through A. C. Burnham, trustee, the face thereof, together with the interest then accrued thereon.

Par. 3. That on or about the 1st day of November, 1875, plaintiff made to the defendant, Asa C. Call, a loan of eleven thousand dollars, and took therefor the notes and mortgage in suit, ten thousand dollars of which was applied in liquidation of the notes and mortgage hereinbefore mentioned.

Par. 4. That plaintiff has neither knowledge nor information sufficient to form a belief as to the truth of any of the other matters herein charged.

Wherefor- plaintiff demands judgment, as prayed in his petition.

CRAWFORD & SOPER,
Attorneys for Plaintiffs.

STATE OF NEW JERSEY, }
County of Middlesex, } *ss:*

I, Henry H. Palmer, being duly sworn, depose and say:
57 That I am the plaintiff in this action; that I have read the foregoing reply, and know its contents, and that I verily believe that the facts therein set forth are true.

HENRY H. PALMER.

Sworn to before me, and subscribed in my presence, by Henry H. Palmer, this 14th day of June, A. D. 1877, at New Brunswick, in the county of Middlesex and State of New Jersey.

[SEAL.] B. BONNEY,
Notary Public.

Filed June 21st, 1877.

58 STATE OF IOWA, }
Palo Alto County, } *ss:*

To John R. Trevett, of Champaign, Esq., a notary public within and for the county of Champaign, in the State of Illinois:

Know ye, that we, the circuit court of the county of Palo Alto, State of Iowa, reposing full confidence in your integrity and fidelity, do, by these presents, constitute, empower, & commission you to summon and cause to come before you, at such time and place as you shall appoint, according to the notice hereto attached, the witnesses hereinafter named, to wit, A. C. Burnham, a material witnesses, as it is said, on the part and in behalf of the plaintiff, in a suit wherein Henry H. Palmer is plaintiff and Asa C. Call is defendant, now pending in our said court, and him to examine on corporal oath or affirmation first to him administ'red, true answers to make to the several interrogations accompanying this commission, & the
59 same, when taken, to certify, seal up, and forward to the clerk of said court, with all convenient dispatch, according to the instructions hereto attached.

Witness L. J. Prouty, clerk of said court, and the seal thereof affixed, at office in Emmetsburg, in said county, this the 15th day of August, A. D. 1877.

[SEAL.] (Signed) T. J. PROUTY, *Clerk.*

60 *Instructions for Taking Depositions.*

Section 4820 of the revision of 1860 (Iowa), requires that "where a deposition is taken upon interrogatories neither party nor his agent or attorney shall be present at the examination of a witness unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if party or agent is present."

The officer taking the depositions will observe the following forms and mode of proceeding, commencing thus:

Depositions of witness- produced, sworn, and examined at ———, in the county of ———, and State of ———, before me (name of officer and style of office), in a certain case now pending in the ——— court of ——— county, and State of Iowa, between ———, plaintiff, and ———, defendant, on the part of the ———. A. B., of lawful age, being produced, sworn, and examined on the part of the ———, deposeth and saith:

61 (Here insert each interrogatory as it occurs, and the answer thereto immediately following.)

NOTE.—Every deposition must be reduced to writing by some person who is neither of the parties, attorney of either, nor in any wise interested in the event of the suit in presence of officer before whom it is taken, and signed by the witness.

If any paper or exhibit is produced and proved or referred to by a witness it should be described in his deposition and referred to by the deponent in such a manner that it may be identified when the deposition is read, and all such papers and exhibits must be attached to and returned with the deposition.

The officer will annex at the foot of the deposition of each witness the following certificate:

I, (insert the name of officer and style of office), do hereby certify that A. B., the deponent, whose place of residence is (here in-

62 sert it) was by me sworn (or affirmed) to testify the whole truth of his (or her) knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his (or her) examination reduced to writing by, (here insert the name), who is neither of the parties nor attorney of either, nor in anywise interested in the suit, and after being carefully by me read over to the said deponent the same was sworn to and subscribed by the said deponent in my presence on the (here insert the date) between the hours of —— a. m. and —— p. m. of said day at (here name the place, county, and State).

Given and certified (here give the date) under my hand and seal official, this — day of ——, A. D. 18—.

(If the officer has a seal it must be affixed.)

Then proceed with other depositions (if any) in the same form, annexing a certificate to each.

When all the witnesses who appear have been sworn and examined and their depositions reduced to writing, subscribed, and certified as above, the officer will attach to the deposition all

63 papers and exhibits proved or referred to in the examination,

the commission and notice (herewith inclosed), with the following certificate indorsed thereon or attached thereto:

THE STATE OF ——, } ss:
County of——, }

I, (name of officer and style of office), within and for, (name the place), or duly commissioned for that purpose, do certify that, in pursuance of the within (or annexed) commission or notice, came before me at, (name the place where the testimony was taken), A, B, C, D, &c. (insert the names of all witnesses), who were there by me then sworn and examined, and such examination reduced to writing by, (the name of the person), who is neither of the parties, their attorney, nor in anywise interested in the event of the suit, and after being by me read over to each of said deponents the same was sworn to and subscribed to by said witnesses respectively in my presence, and their depositions are now herewith returned.

(State if either or both parties were present at the examina-
64 tion personally or by agent or attorney.) Given under my hand and seal official hereto affixed, at (name of place, county, and State), this (give date).

The return must be accompanied by a certificate of the official character of the officer when the depositions are taken, by any judge, notary public, or justice of the peace, attested by the seal of the State of ——, or by the seal of any court of record of the county and city wherein such deposition shall be taken, which may be in the following form:

It is hereby certified that ———, on, (here insert the date at which the depositions were taken and certified), was (and now is) —— (state the style of office) ——, State of ——, duly commissioned and acting as such, and that full faith and credit are due to his acts as such. In testimony whereof I, A B (here state the style of office), have hereunto subscribed my name and affixed the seal of said court at office, this — day of ——, eighteen hundred and ——.

[L. S.] A. B.

65 The officer taking the deposition is required to enclose in a strong envelop-, securely sealed, the depositions, papers, and exhibits, commission notice, and certificates, and direct the same to the clerk of the —— court of —— county, —— Iowa, noting on some convenient part of the envelope the style of the cause and contents, thus:

——
vs. } Depositions on the part of ———.
——

The depositions must be begun on the day mentioned in the notice. If they cannot be completed on that day, the taking of them may be adjourned to the succeeding day, at the same place and between the same hours. The person taking them should in such case make the following entry closing the business for that day, viz:

Not being able to complete the taking of said depositions, by reasons that (here insert the reason), I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

66 A. B.

On the succeeding day let the person taking the depositions commence as follows:

Pursuant to the adjournment as above stated, on the — day of ——, in the year eighteen hundred and ——, between the hours of —— in the forenoon and —— in the afternoon, at the ——, I continued the taking of said depositions as follows:

A. B., in continuance of his depositions commenced yesterday, on his oath further says, etc.

The foregoing directions must be strictly observed or the deposition will be unavailing.

☞ If the officer taking the deposition has a seal of office, it must be affixed to every certificate.

☞ The officer taking the deposition must write out each interrogatory in full, and insert the answer just below the proper question.

☞ The depositions must be returned by mail, unless some other mode is agreed upon between the parties.

67 Deposition of witness produced, sworn, and examined at my office in the city of Champaign, in the county of Champaign, and State of Illinois, before me, John R. Levett, a notary public in and for said Champaign county, in a certain case now pending in the circuit court of Palo Alto Co., State of Iowa, between Henry H. Palmer, plaintiff, and Asa C. Call, defendant, on the part of the plaintiff.

ALBERT C. BURNHAM, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

Int. 1. State your name, age, & place of residence & occupation.

Answer 1. Name, Albert C. Burnham; age, 38; place of residence, Champaign city, Illinois; occupation, loan broker.

Int. State whether or not you are acquainted with the parties or either of them, and, if so, how long have you known them or either of them?

Answer 2. I have known the plaintiff, Henry H. Palmer,

68 seven or eight years. I have known the defendant, Asa C. Call, about five years.

Int. 3. State whether or not you are connnected with the firm Burnham, Ormsby & Co., doing business as bankers and loan & land brokers at Emmetsburg, Iowa, and, if so, state your connnection with said firm generally.

Answer 3. I am a member of said firm; I own the principal part of the capital of the bank, upon which I receive ten per cent. interest. The business is conducted by E. S. Ormsby & A. S. Ormsby, resident partners, who are my nephews.

Int. 4. State whether said firm negotiated a loan for Asa C. Call

in 1872, and, if so, state all the facts within your knowledge relating thereto and particularly to whom the money belonged, and in whose name the notes and mortgage was taken.

Answer 4. During the fall 1872 I was visiting at Em-
69 metsburg, Iowa. While there Asa C. Call, defendant herein, applied for a loan of ten thousand ($10,000) dollars, saying he had an opportunity to make, I think, some six or eight thousand dollars if he could get a loan immediately of ten thousand dollars, and offered to pay Burnham, Ormsby & Co. two thousand dollars if they would secure him this loan. At this time I had some ten thousand dollars belonging to Mrs. Maggie J. Davison, which she had put into my hands to be loaned on real estate security for her. It may be well to say here that this money was derived from a policy of insurance on the life of her deceased husband, who had lived for some years at my house and died there in July, 1872. And often before the death of Mr. Davison he had requested me in the presence of his wife, Mrs. Maggie J. Davison, and his sister, my wife, to collect the amount due on his life insurance policies upon his decease (he having been an invalid for many years and daily expecting death), and to invest the same for the use of his wife
70 in such securities as I was then negotiating. The policies of insurance were payable to Mrs. Maggie J. Davison and as soon as she received the money, which was paid to her by draft on New York, she immediately endorsed said drafts to me, with the request that I invest the same in accordance with her late husband's wishes. The firm of Burnham, Ormsby & Co. had just commenced business at Emmetsburg aforesaid and deeming the application of Judge Asa C. Call for ten thousand dollars a desirable one I determined to accept it for Mrs. Davidson, and accordingly sent them the funds to make the loan to him as agreed. I think I had the note and mortgage made payable to me, partly as a convenience to myself and partly at Mrs. Davison- request, who desired me to act as agent or trustee for her in accordance with her late husband's request.

Int. 5. State what, if any, instructions Mrs. Davison gave you in regard to investing her funds.

71 Answer 5. None, save to invest in bond & mortgage, or real estate security, where she could realize ten per cent. interest.

Int. 6. State what, if any, bonus or commission Mrs. Davison authorized you or Burnham, Ormsby & Co. to charge or receive for the loaning of said funds and how much of the same did she receive.

Answer 6. She never authorized or received one cent of bonus or commission whatever, and never knew that any bonus or commission had been been taken or paid on account of the loan that I am aware of.

Int. 7. What part of the commission or bonus did you receive and who received the remainder?

Answer 7. The respective members of the firm Burnham, Ormsby & Co. received all the bonus or commission paid by A. C. Call which helped to make up the profits of said company and pay interest on their capital, &c.

72 Int. 8. State what became of the notes and mortgage of the defendant, Asa C. Call, if you know.

Answer 8. The- were owned by and Mrs. Davison received the interest on them until the summer or fall of 1873, when Mrs. Davison asked me to sell them, as she needed the money. I sold them accordingly to Henry H. Palmer, the plaintiff herein, at par and accrued interest, if my memory serves me correctly, and paid proceeds over to Mrs. Davison.

Int. 9. State anything further you may know that will be of benefit to the plaintiff.

Answer 9. Nothing.

ALBERT C. BURNHAM.

73 In the Circuit Court of Palo Alto County, Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } In Vacation.

Cross-interrogatories to be propounded to A. C. Burnham.

Cross-int. 1st. What interest have you in the firm of Burnham, Ormsby & Co., what amount of capital invested in the concern, & what share of the profits do you receive? Answer fully.

Answer 1. I have an interest as partner & own eight thousand dollars of the capital stock, upon which the firm of Burnham, Ormsby & Co. pay me ten per cent. interest per annum, and I have one-third interest in the profits of the business.

Cross-int. 2nd. If in your answer to the 4th interrogatory you have answered that the money therein received belonged to a Mrs. Davison or Maggie J. Davison, you may state fully how you
74 came by the same.

Answer 2nd. As soon as Mrs. Davison received payment of the life insurance of her deceased husband she gave me the money, with the request that I loan the same on real estate security, in the same manner that I was loaning for others, and in accordance with the mutual understanding between herself, her late husband, and myself.

Cross-int. 3rd. Is it not true, as a matter of fact, that you or Burnham, Ormsby & Co., as a firm, borrowed the money of Mrs. Davison, & agreed to pay her interest thereon at the rate of ten per cent., or some other fixed rate of interest?

Answer 3rd. In no sense whatever did I or Burnham, Ormsby & Co. borrow the money, though I may have stated, and I think I did to my partners (the Mess. Ormsbys) that the money belonged to Mrs. Davison, and must be loaned on real estate, according to our usual rule, and that the loan must bear ten per cent. interest,
75 that being the rate at which we were loaning in Illinois at that time.

Cross-int. 4. State fully what your agreement, or the agreement of Burnham, Ormsby & Co., was with Mrs. Davison in regard to the money placed by her in your or their hands.

Answer 4. She had no agreement with the firm or with me. There was no agreement whatever in the matter. Mrs. Davison simply requested me to loan the money so she should receive ten per cent.

Cross-int. 5th. What receipt, note, agreement was given Mrs. Davidson by you or Burnham, Ormsby & Co. at the time or times she placed money in your or their hands? State fully and if you have any such receipt, note, agreement, or paper or copy thereof still in your possession, annex the same or a certified copy thereof to your answer hereto, & if you have none, state fully the contents of the same, giving as nearly as possible the exact terms of the same.

76 Ans. 5. I am sure that neither Burnham, Ormsby & Co. or myself ever signed any note or agreement for Mrs. Davison regarding the money loaned Asa C. Call; I doubt very much if I gave Mrs. Davidson even a receipt for the amount paid me. If I did it was merely a receipt stating the money was to be loaned at ten per cent. As I stated before Mrs. Davison gave me drafts when she received them, and which I presume I collected in the usual course of business. Mrs. Davison and her husband were inmates of my house for some years before Mr. Davison's death, and I cannot now recollect of ever having given her any receipt for money paid me.

Cross-int. 6. At the time of Mrs. Davison placing money in your hands or in the hands of Burnham, Ormsby & Co., what arrangement was made with her in relation to paying her ten per cent. or any other rate of interest thereon, and was the same

77 arranged personally or by correspondence; if personally, state all your conversation; if by letter, annex all letters to to your answer hereio, or if you have not the letters, state fully the contents of each.

Ans. 6. As before stated, there was no arrangement whatever with anybody, and as Mrs. Davison resided with me at the time of her husband's decease, when she received the money she simply handed it over to me. There was no correspondence, agreements, or understandings further than that the money should be loaned by me at ten per cent interest.

Cross-int. 7th. Was the note of A. C. Call and mortgage & *mortgage* securing the same to you dated Nov. 1st, 1872, for $10,000 ever in the possession or under the control of Mrs. Davison, or did she ever see it, to your knowledge, or did she ever know of any such note and mortgage; & if yes, when? Answer fully and explicitly.

78 Ans. 7. The note & mortgage of Asa C. Call were always under the control of Mrs. Davison, but she left these securities with her other papers in my safe here & in my charge. If I remember rightly, when I received the papers in the loan to A. C. Call, I showed them to Mrs. Davison & explained fully the nature of the security. At all events, I informed her of the loan I had made for her & explained to her fully all the circumstances of the

security, and she received the interest until the loan was sold to H. H. Palmer.

Cross-int. 8th. Has any person seen you or written you in regard to your testimony herein? If yea, state what was said & annex any writing received by you in relation to the same; state fully.

Ans. 8. None that I am now aware of; while at Emmetsburg last spring I freely discussed this suit with my partners, telling them what I could testify to, as to the facts in this case, but saw or
79 talked with no one else in the matter.

Cross-int. 9. Has any person in any manner suggested your answers either in form or substance, to the interrogatories or cross-interrogatories herein or either? If so, state fully all particulars and annex any writing received or read you in relation thereto or state the contents if you have not the writing.

Ans. 9. My answers to the interrogatories & cross-interrogatories herein have not been suggested in any manner, but are simply the facts as I stated them to my partners last spring.

Cross-int. 10. State anything you know in relation to this suit or the facts out of which it grows favorable to the defendant, Asa C. Call.

Ans. 10. I know of nothing favorable to the defendant in this suit.

ALBERT C. BURNHAM.

80 I, John R. Trevett, a notary public, do hereby certify that Albert C. Burnham, the deponent, whose place of residence is Champaign city, State of Illinois, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid. That deponent was examined, and his examination reduced to writing by myself; that I am neither of the parties to said suit nor attorney of either nor in anywise interested in the suit; and after being carefully by me read over to the said deponent the same was sworn to and subscribed by the said deponent in my presence, on the 18th day of August, 1877, between the hours of eight o'clock a. m. & six o'clock p. m. of said day at my office in Champaign city, Champaign county, State of Illinois. Given & certified, this 18th day of August, 1877, under my hand and official seal, this 18th day of August, 1877.

[SEAL.] JOHN R. TREVETT,
Notary Public.

81 STATE OF ILLINOIS, } ss:
Champaign Co., }

I, John R. Trevett, a notary public within and for Champaign county, State of Illinois, do hereby certify that in pursuance of the annexed commission and notice come before me at my office, in Champaign city, county & State aforesaid, Albert C. Burnham, who was there by me then sworn and examined, and such examination reduced to writing by myself; that I am neither of the parties, their attorney, nor in anywise interested in the event of the suit, and after being by me read over to said deponent the same was

sworn to and subscribed to by said witness in my presence, and his deposition is now herewith returned. Neither of the parties to the suit were present at the examination personally or by agent or attorney.

Given under my hand and official seal hereto affixed, at Champaign city, Champaign county, & State of Illinois, this
82 18th day of August, A. D. 1877.

[SEAL.] JOHN R. TREVETT,
Notary Public.

STATE OF ILLINOIS, } *ss:*
Champaign County, }

I, J. S. McCullough, clerk of the county court in and for said county, the same being a court of record, do hereby certify that John R. Trevett, whose signature appears to the foregoing proof of acknowledgement of deposition, was, at the date of taking said proof, a notary public in said county, as evidenced by his commission of record in my office; and I further certify that I am well acquainted with his handwriting, and know that the signature above purporting to be his is genuine, and that said acknowledgement is taken in accordance with the laws of Illinois.

In testimony whereof, I hereunto set my name and affix
83 the seal of said court at Urbana, in said county, this 20th day of August, A. D. 1877.

[SEAL.] J. S. McCULLOUGH, *Clerk.*

Opened and filed August 23d, 1877.

84 *Interrogatories to be Propounded to A. C. Burnham.*

STATE OF IOWA, *Palo Alto County:*

Circuit Court, August Term, 1877.

H. H. PALMER *vs.* A. C. CALL.

Int. 1. State your name, age, and place of residence and occupation.

Int. 2. State whether or not you are acquainted with the parties of either of them; and, if so, how long have you known them or either of them.

Int. 3. State whether or not you are connected with the firm of Burnham, Ormsby & Co., doing business as bankers and loan and land brokers at Emmetsburg, Iowa; and, if so, state your connection with said firm generally.

Int. 4. State whether said firm negotiated a loan for Asa C. Call in 1872; and, if so, state all the facts within your knowledge relating thereto, and particularly to whom the money belonged,
85 and in whose name the notes and mortgages were taken.

Int. 5. State what, if any, instructions Mrs. Davison gave you in regard to investing her funds.

Int. 6. State what, if any, bonus or commission Mrs. Davison authorized you or Burnham, Ormsby & Co. to charge or receive for the loaning of said funds, and how much of the same did she receive.

Int. 7. What part of the commission or bonus did you receive and who received the remainder?

Int. 8. State what became of the notes and mortgage of the defendant, Asa C. Call, if you know.

Int. 9. State anything farther you may know that will be of benefit to the plaintiff.

86 *Notice of Sueing out a Commission to take Depositions.*

STATE OF IOWA, } ss:
Palo Alto County, }

In the Circuit Court.

HENRY H. PALMER, Plaintiff, *versus* ASA C. CALL, Defendant.

To the above-named *named* defendant, Asa C. Call, or to George E. Clarke and T. W. Harrison, Esq., his attorney:

You are hereby notified that on the 15th day of August, 1877, the above-named plaintiff will sue out a commission from the office of the clerk of the circuit court of the State of Iowa in and for Palo Alto county, directed to John R. Trevett, of Champaign, Esq., a notary public within and for the county of Champaign, in the State of Illinois, to take the deposition of A. C. Burnham upon written interrogatories, a copy of which is herewith annexed, and
87 when so taken to be read in evidence on trial of the above-entitled cause on behalf of the plaintiff.

You can file the cross-interrogatories if you think proper.

(Signed) CRAWFORD & SOPER,
Att'y- for Plaintiff.

STATE OF IOWA, } ss:
Palo Alto County, }

I, T. A. Cummins, on oath say: That I received the within notice and interrogatories on the 4th day of August, 1877, and that on the same day at Emmetsburg township, in said county, served the same personally on T. W. Harrison, one of the attorneys therein named, by offering to read it to him, and he refusing to hear it read, and by then delivering to him personally a copy of said notices and interrogatories.

T. A. CUMMINS.

Subscribed by the *writ* T. A. Cummins in my presence, and sworn to by him before me, this 15th day of August, 1877.

[SEAL.] T. R. CRAWFORD,
Notary Public.

Filed Aug. 8th, 1877.

88 *Cross-Interrogatories to be Propounded to A. C. Burnham.*

In the Circuit Court, Palo Alto Co., Iowa.

H. H. PALMER
vs.
ASA C. CALL *et al.* } In Vacation.

Cross-interrogatory 1st. What interest have you in the firm of Burnham, Ormsby & Co.; what amount of capital invested in the concern, and what share of the profits do you receive? Answer fully.

X Int. 2nd. If, in your answer to the 4th interrogatory, you have answered that the money therein received belonged to a Mrs. Davison or Maggie J. Davison, you may state fully how you came by the *the* same.

X Int. 3rd. Is it not true, as a matter of fact, that you or Burnham,
89 Ormsby & Co., as a firm, borrowed the money of Mrs. Davison, and agreed to pay her interest thereon at the rate of ten per cent., or some other fixed rate of interest?

X Int. 4. State fully what your agreement, or the agreement of Burnham, Ormsby & Co., was with Mrs. Davison in regard to the money placed by her in your or their hands.

X Int. 5. What receipt, note, agreement, was given Mrs. Davison by you or Burnham, Ormsby & Co. at the time or times she placed money in your or their hands? State fully, and if you have any such receipt, note, agreement, or paper or copy thereof, still in your possession, annex the same, or a certified copy thereof, to your answer hereto; and if you have none, state fully the contents of the same, giving as nearly as possible the exact terms of the same.

X Int. 6. At the time of Mrs. Davison placing money in
90 your hands, or in the hands of Burnham, Ormsby & Co., what arrangements was made with her in relation to paying her ten per cent. or any other rate of interest thereon, and was the same arranged personally or by correspondence; if personally, state all your conversation; if by letter, annex all letters to your answer hereto, or, if you have not the letters, state fully the contents of each.

X Int. 7. Was the note of A. C. Call and mortgage, and mortgage securing the same to you, dated November 1st, 1872, for $10,000, ever in the possession or under the control of Mrs. Davison, or did she ever see it to your knowledge, or did she ever know of any such note *a* mortgage? And, if yea, ans. fully and explicitly.

X Int. 8th. Has any person seen you or written you in regard to your testimony herein? If yea, state what was said, and annex any writing received by you in relation to the same; state fully.

91 X Int. 9. Has any person in any manner suggested your answer either in form or substance to the interrogatories or cross-interrogatories herein, or either? If so, state fully all particulars, and annex any writing received or read you in relation thereto, or state the contents if you have not the writing.

X Int. 10. State anything you know in relation to this suit or the facts out of which it grows favorable to the defendant, Asa C. Call.

(Signed) GEORGE E. CLARKE,
Def't Call's Att'y.

Filed August 14th, 1877.

92 *Notice of Sueing out Commission to take Depositions.*

STATE OF IOWA, } ss:
Palo Alto County, }

In the Circuit Court.

HENRY H. PALMER, Plaintiff, *versus* ASA C. COLE, Defendant.

To the above-named defendant or to Geo. E. Clarke and T. W. Harrison, Esq., his attorney:

You are hereby notified that on the 15th day of August, 1877, the above-named plaintiff will sue out a commission from the office of the clerk of the circuit court of the State of Iowa, in and for Palo Alto county, directed to Mason B. Loomis, No. 122 La Salle street, Chicago, Esq., a notary public within and for the county of Cook, in the State of Illinois, to take the deposition of Maggie J. Davison upon written interrogatories, a copy of which is
93 herewith annexed, and when so taken to be read in evidence on trial of the above-entitled cause on behalf of the plaintiff.

You can file the cross-interrogatories if you think proper.

(Signed) CRAWFORD & SOPER,
Att'y- for Plaintiff.

Filed August 8th, 1877.

STATE OF IOWA, } ss:
Palo Alto County, }

I, T. A. Cummins, on oath say: That I received the within notice and interrogatories for service on the 4th day of August, 1877, and that on the same day at Emmetsburg township, in said county, I served the same personally on T. W. Harrison, on- of the attorneys therein named, by offering to read it to him, and he refusing to hear it read, and by then delivering to him personally a copy of said notice and interrogatories.

(Signed) T. A. CUMMINS.

94 Subscribed by the said T. A. Cummins in my presence and sworn to by him before me, this 15th day of August, A. D. 1877.

[SEAL.] (Signed) T. R. CRAWFORD,
Notary Public.

STATE OF IOWA, } ss:
Palo Alto County, }

Received this notices on the 4 day of August, 1877, and on the 4 day of same month I served it on T. W. Harrison by offering to read it to him in his presentes and he-ring, but he refusing to hear the

same, and giving him a copey of the same, in Emmetsburg township, Palo Alto county, Iowa.

(Signed) T. A. CUMMINS, *Constable.*

Fees	50
Copeys	40
Mileage	10
	$1 00

95 STATE OF IOWA, *Palo Alto County,* } *ss:*

To Mason B. Loomis, No. 122 La Selle street, Chicago, Esq., a notary public within and for the county of Cook, in the State of Illinois.

Know ye that we, the circuit court of the county of Palo Alto, State of Iowa, reposing full confidence in your integrity and fidelity, do, by these presents, constitute, empower, and commission you to summon and cause to come before you, at such time and place as you shall appoint, according to the notice hereto attached, the witnesses hereinafter named, to wit:

Maggie J. Davison, a material witnesses, as it is said, on the part and in behalf of the plaintiff in a suit wherein Henry H. Palmer is plaintiff and Asa C. Call is defendant, now pending in our said court, and her to examine on corporal oath or affirmation, first to her administered, true answers to make to the several interroga-
96 tories accompanying this commission; and the same, when taken, to certify, seal up, and forward to the clerk of said court with all convenient di-patch, according to the instructions hereto attached.

Witness T. J. Prouty, clerk of said court, and the seal thereof affixed, at office, in Emmetsburg, in said county, this the 15th day of August, A. D. 1871.

[SEAL.] (Signed) T. J. PROUTY, *Clerk.*

Instructions for Taking Depositions.

Section 4820 of the Revision of 1860 (Iowa) requires that: "Where a deposition is taken upon interrogatories neither party, nor his agent or attorneys, shall be present at the examination of a witness unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if party or agent is present."

The officer taking the depositions will observe the follow-
97 ing forms and modes of proceeding, commencing thus:

Depositions of witnesses produced, sworn, and examined at ———, in the county of ——— and State of ———, before me, (name of officer and style of office), in a certain cause now pending in the ——— court of ——— county, State of Iowa, between ———, plaintiff, and ———, defendant, on the pact of the ———.

A B, of lawful age, being produced, sworn, and examined on the part of the ———, deposeth and saith: (Here insert each interrogatory as it occurs, and the answer thereto immediately following.)

NOTE.—Every deposition must be reduced to writing by some person who is neither of the parties, attorneys of either, nor in anywise interested in the event of the suit, in presence of the officer before whom it is taken, and signed by the witness. If any paper or exhibit is produced and proved or referred to by a witness,
98 it should be described in his deposition and referred to by the deponent in such a manner that it may be identified when the deposition is read, and all such papers and exhibits must be attached to and returned with the deposition.

The officer will annex at the foot of the deposition of each witness the following certificate:

I, (insert the name of officer and style of office), do hereby certify that A B, the deponent, whose place of residence is (here insert it), was by me sworn (or affirmed) to testify the whole truth of his (or her) knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his (or her) examination reduced to writing by (here name the person), who is neither of the parties nor attorney of either nor in anywise interested in the suit, and after being carefully by me read over to the said deponent,
99 the same was sworn to and subscribed by the said deponent in my presence, on the (here insert the date), between the hours of — a. m. and — p. m. of said day, at (here name the place, county, and State). Given and certified (here name the date), under my hand and seal official, this — day of ———, A. D. 18—. (If the office has a seal it must be affixed.)

Then proceed with other depositions (if any) in the same form, annexing a certificate to each.

When all the witnesses who appear have been sworn and examined, and their depositions reduced to writing, subscribed, and certified as above, the officer will attach to the deposition all papers and exhibits proved or referred to in the examination, the commission and notice (herewith enclosed), with the following certificate indorsed thereon or attached thereto:

STATE OF ———, }
County of ———, } *ss:*

100 I, (name of officer and style of office), within & for (name the place), or duly commissioned for that purpose, do certify that in pursuance of the within (or annexed) commission and notice, came before me, at (name the place where the testimony was taken), A, B, C, D, &c. (insert the names of all the witnesses), who were there by me then sworn and examined, and such examination reduced to writing by (the name of the person), who is neither of the parties, their attorney, nor in anywise interested in the event of the suit, and after being by me read over to each of said deponents the same was sworn to and subscribed to by said witnessses, respectively, in my presence, and their depositions are now herewith returned. (State if either or both parties were present at the examination personally or by agent or attorney.)

Given under my hand and seal official, hereto affixed, at
101 (name of place, county, and State), this (give date).

The return must be accompanied by a certificate of the official character of the officer when the depositions are taken by any judge, notary public, or justice of the peace, attested by the seal of the State of ——— or by the seal of any court of record of the county and city wherein such deposition shall be taken, which may be in the following form:

It is hereby certified that ——— on (here insert the date at which the depositions were taken and certified) ——— was (and now is) ——— (state the style of office), ———, State of ———, commissioned and acting as such, and that full faith and credit are due to his acts as such.

In testimony whereof, I, A. B. (here state the style of office), have hereunto subscribed my name and affixed the seal of said court, at office, this — day of ———, eighteen hundred and ———.

[L. S.] A. B.

102 The officer taking the deposition is required to enclose in a strong envelop-, securely sealed, the depositions, papers, and exhibits, commission, notice, and certificates, and direct the same to the clerk of the ——— court of ——— county, Iowa, noting on some convenient part of the envelop- the style of the cause and contents, thus:

——— ———
vs. } Depositions on the part of ———.
——— ———

The depositions must be begun on the day mentioned in the notice. If they cannot be completed on that day, the taking of them may be adjourned to the succeeding day, at the same place and between the same hours. The person taking them should in such case make the following entry closing the business for that day, viz:

Not being able to complete the taking of said depositions by reason that (here insert the reason), I adjourn the further
103 taking of the same until to-morrow, then to be continued, at the same place and between the same hours mentioned in the annexed notice.

A. B.

On the succeeding day let the person taking the depositions commence as follows:

Pursuant to the adjournment as above stated on —— day of ———, in the year eighteen hundred and ——, between the hours of —— in the forenoon and —— in the afternoon at the ——, I continued the taking of said depositions as follows:

A. B., in continuance of his depositions commenced yesterday, on his oath further says, etc.

The foregoing directions must be strictly observed, or the deposition will be unavailing.

☞If the officer taking the deposition has a seal of office, it must be affixed to every certificate.

☞The officer taking the deposition must write out each interrogatory in full, and insert the answer just below the proper question.

104 ☞The depositions must be returned by mail unless some other mode is agreed upon between the parties.

105 *Interrogatories to be propounded to Maggie J. Davison.*

STATE OF IOWA, } ss :
Palo Alto County, }

Circuit Court, August Term, 1877.

H. H. PALMER *vs.* A. C. CALL.

Int. 1st. State your name, age, and place of residence.

Int. 2nd. State whether or not you are acquainted with the parties to this action or either of them; and, if so, how long have you known them or either of them?

Int. 3d. State whether or not you are acquainted with the firm of Burnham, Ormsby & Co., of Emmetsburg, Iowa, and the individual members of said firm, A. C. Burnham, E. S. Ormsby, and A. L. Ormsby and, if so, how long have you known them.

106 Int. 4th. State what, if any, business transactions you had with said firm and the individual numbers thereof during the years of 1872, '3, '4, & '5, and particularly with regard to the loaning of your money.

Int. 5th. State what, if any, instructions you gave to A. C. Burnham or Burnham, Ormsby & Co., in regard — investing your funds.

Int. 6. State what you actually received on the money invested by them.

Int. 7. State what, if any, sum was paid you in addition to the interest for the loan of said money, and what, if any, commission or bonus did you receive or authorize said Burnham or Burnham, Ormsby & Co., to charge or receive for investing said money.

107 *Cross-Interrogatories to be propounded to Maggie J. Davison.*

In the Circuit Court of Palo Alto County, Iowa.

H. H. PALMER } In Vacation.
vs.
A. C. CALL *et al.* }

Cross-int. 1st. Is it not true that as a matter of fact you loaned your money to A. C. Burnham, or Burnham, Ormsby & Co., upon his or their agreement to pay you interest thereon at the rate of ten per cent.?

X Int. 2nd. State fully what your agreement with A. C. Burnham, or Burnham, Ormsby & Co., was in regard to the money by you placed in his or their hands?

X Int. 3rd. What receipt, note, agreement, or paper was given you

by A. C. Burnham, or Burnham, Ormsby & Co., at the time or times you placed money in his or their hands?

108 State fully, & if you have any such receipt, note, agreement, or paper from him or them still in your hands annex the same, or a certified copy thereof, to your answer hereto, & if you have none, state fully the contents of the same, giving as nearly as possible the exact words of the same.

X Int. 4th. At the time of placing your money in the hands of A. C. Burnham, or Burnham, Ormsby & Co., what arrangement did you make with him or them in relation to he or they paying you ten per cent., or any other rate of interest thereon, & was the same arranged personally or by correspondence; if personally, state all your conversation; if by letter, annex all letters in your answer hereto, or if you have not the letters, state fully the contents of each.

109 X Int. 5th. Was the note of Asa C. Call, & mortgage securing the same, given to A. C. Burnham November 1st, 1872, for $10,000, ever in your possession or under your control, or did you ever see the same, or know of any such note & mortgage; &, if yea, when; answer fully and explicitly.

X Int. 6. Has A. C. Burnham, or any of the firm of Burnham, Ormsby & Co., or Soper & Crawford, their att'ys, or H. H. Palmer, the plaintiff herein, or any other person, seen you or written you in regard to your testimony herein; if yea, state what was said, and annex any writing received by you in relation to the same; state fully.

X Int. 7. Have either of the persons mentioned in X Int. 6, or any other person, in any manner suggested your answers, either in substance or form, to the interrogatories or X interrogatories herein, or either; if so, state fully all particulars, & annex any writing

110 received or read you in relation thereto, or state the contents if you have not the writing.

X Int. 8. State anything you know in relation to this suit or the facts out of which it arises favorable to the defendant, Asa C. Call.

(Signed) GEO. E. CLARKE,
Def't Call's Att'y.

Filed Aug. 14, 1877.

Deposition of witness, produced, sworn, and examined at my office (number 122 La Salle St.), in the city of Chicago, in the county of Cook, and State of Illinois, before me, Mason B. Loomis, a notary public within and for the county of Cook, and State of Illinois, in a certain case now pending in the circuit court of Palo Alto county, State of Iowa, between Henry H. Palmer, plaintiff, and Asa C. Call, defendant, and, on the part of the plaintiff MAGGIE J. DAVISON, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

111 Int. 1st. State your name, age, and place of residence.

Ans. My name is Maggie J. Davison; age is 32 years; reside at Mount Clare, Cook county, Illinois.

Int. 2nd. State whether or not you are acquainted with the par-

ties to this action, or either of them; and, if so, how long have you known them, or either of them?

Ans. Am not acquainted with either of the parties.

Int. 3d. State whether or not you are acquainted with the firm of Burnham, Ormsby & Co., of Emmetsburg, Iowa, and the individual members of said firm—A. C. Burnham, E. S. Ormsby, and A. L. Ormsby; and, if so, how long have you known them?

112 Ans. I have known A. C. Burnham for about ten years, and am slightly acquainted with E. S. Ormsby and A. L. Ormsby; met them once or twice five years ago.

Int. 4th. State what, if any, business transactions you have had with said firm and the individual members thereof during the years 1872 '3, '4, & '5, and particularly with regard to the loaning of your money.

Ans. I never had any with the Messrs. Ormsbys. The only business transaction I had with said parties was this, to wit: In July, A. D. 1872, my husband died leaving an insurance on his life in my favor of twelve thousand five hundred dollars in the Equitable Life Insurance Company of New York; some time afterwards I received a draft for the said amount from said company; I immediately indorsed the draft over to A. C. Burnham with the request that he

113 should invest the same with real estate security at ten per cent. interest. This I did at the special request of my husband, while living, and also according to my own desire. Some little time after Mr. Burnham informed me he had invested the money at ten per cent. interest to Asa C. Call, of Kossuth county, Iowa, on real estate security.

Int. 5th. State what, if any, instructions you gave to A. C. Burnham or Burnham, Ormsby & Co. in regard to investing your funds.

Ans. None, except to invest it on real estate security at ten per cent. interest.

Int. 6. State what you actually received on the money invested by them.

Ans. Ten per cent. interest.

Int. 7th. State what, if any, sum was paid you in addition to the interest for the loan of said money, and what, if any, com-

114 mission or bonus did you receive or authorize said Burnham or Burnham, Ormsby & Co. to charge or receive for investing said money.

Ans. I never received anything except the ten per cent. interest on the money in the way of commission, bonus, or otherwise; neither did I ever authorize Burnham or Burnham, Ormsby & Co. to charge or receive anything except the ten per cent. interest.

Cross-Interrogatories.

Cross-int. 1st. Is it not true that, as a matter of fact, you loaned your money to A. C. Burnham, or to Burnham, Ormsby & Co., upon his or their agreement to pay you interest thereon at the rate of ten per cent.?

Ans. It is not true.

Cross-int. 2nd. State fully what your agreement with A. C. Burnham or Burnham, Ormsby & Co. was in regard to the money by you placed in his or their hands.

115 Ans. I never had any agreement with the Ormsbys, and the only agreement I had with Burnham was that he should loan the money at ten per cent. interest on good real estate security.

Cross-int. 3d. What receipt, note, agreement, or paper was given you by A. C. Burnham or Burnham, Ormsby & Co. at the time or times you placed money in his or their hands? State fully, and if you have any such receipt, note, agreement, or paper from him or them still in your hands, annex the same, or a certified copy thereof, to your answer hereto; and if you have none, state fully the contents of the same, giving, as nearly as possible, the exact words of the same.

Ans. I never received any writing at all, only the verbal promise of Mr. Burnham to loan the money as requested. Mr. Burn-

116 ham is my brother-in-law, and for some time before *his* my husband's death we resided at Burnham's house. We had every confidence in Burnham, & before my husband died we talked over the matter of the investment of this money, and it was his request that it should be left with Burnham to loan for me as stated.

Cross-int. 4th. At the time of placing your money in the hands of A. C. Burnham, or Burnham, Ormsby & Co., what arrangements did you make with him or them in relation to he or they paying you ten per cent. or any other rate of interest thereon, & was the same arranged personally or by correspondence; if personally, state all your conversation; if by letter, annex all letters in your answer hereto, or, if you have not the letters, state fully the contents of each.

Ans. I had no other arrangement than as hereinbefore

117 stated; the arrangement was made personally; I do not now remember the exact conversation; I only remember giving him the draft and asking him to loan the money for me, as already stated.

Cross-int. 5th. Was the note of Asa C. Call, & mortgage securing the same, given to A. C. Burnham Nov. 1st, 1872, for $10,000, ever in your possession or under your control, or did you ever see the same or know of any such note & mortgage; if yea, when; answer fully and explicitly.

Ans. That note and mortgage were in my possession just as much as any of my papers were; I left them all with Mr. Burnham for safe-keeping; I do not remember whether I saw the note & mortgage or not, but I know Mr. Burnham told me all about them shortly after the loan was made.

118 Cross-int. 6th. Has A. C. Burnham, or any of the firm of Burnham, Ormsby & Co., or Soper & Crawford, their att'ys, or H. H. Palmer, the plaintiff herein, or any other person, seen you or written you in regard to your testimony herein; if yea, state what was said, and annex any writing received by you in relation to the same; state fully.

Ans. No, sir; except a notice from Crawford & Soper, which I hereto annex, marked Exhibit "A."

Cross-int. 7th. Have either of the persons mentioned in X Int. 6, or any other person, in any manner, suggested your answers, either in substance or form, to the interrogatories or X interrogatories herein, or either; if so, state fully all particulars, & annex any writing received or read you in relation thereto, or state the contents if you have not the writing.

Ans. No, sir.

119 Cross-int. 8th. State anything you know in relation to this suit or the facts out of which it arises favorable to the defendant.

Ans. I know of none.

(Signed) MRS. MAGGIE J. DAVISON.

Opened and filed August 24th, 1877.

T. J. PROUTY,
Clerk C. C.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Mason B. Loomis, a notary public within and for the county of Cook and State of Illinois, do hereby certify that Maggie J. Davison, whose place of residence is Mont Clare, Cook county, State of Illinois, was by me sworn to testify the whole truth, of her knowledge, touching the matter in controversy in the cause aforesaid; that deponent was examined, and her examination reduced to writing by me, the said Mason B. Loomis, who is neither of the

120 parties, nor attorney of either, nor in anywise interested in the suit, and, after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence, on the 20th day of August, A. D. 1877, between the hours of 9 o'clock a. m. and 6 o'clock p. m. of said day, at my office (number 122 La Salle street), in the city of Chicago, in the county of Cook and State of Illinois. Given and certified under my hand and seal official, this 20th day of August, A. D. 1877.

[SEAL.] (Signed) MASON B. LOOMIS,
Notary Public.

THE STATE OF ILLINOIS, } ss:
County of Cook, }

I, Mason B. Loomis, a notary public within and for the county of Cook, and State of Illinois, or duly commissioned for that

121 purpose, do certify that in pursuance of the within commission and notice came before me, at my office (number 122 La Salle street), in the city of Chicago, in the county of Cook and State of Illinois, Maggie J. Davison, who was there by me then sworn and examined, and such examination reduced to writing by me, who is neither of the parties, their attorney, nor in anywise interested in the event of the suit, and, after being by me read over to said deponent, the same was sworn to and subscribed by said witness, in my presence, and her deposition is now herewith returned.

Given under my hand, and seal official hereto affixed, at the city of Chicago, in the county of Cook and State of Illinois, this 20th day of August, A. D. 1877.

[SEAL.] (Signed) MASON B. LOOMIS,
Notary Public.

I also certify that my fees, amounting to $5.00 for taking
122 this deposition, have been paid to me by the plaintiff.

(Signed) MASON B. LOOMIS,
Notary Public.

STATE OF ILLINOIS, }
Cook County, } *ss:*

I, Hermann Lieb, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Mason B. Loomis, Esq., whose name is subscribed to the certificate to the annexed deposition, was, at the time of signing the same, a notary public in and for Cook county, duly commissioned and sworn and acting as such, and authorized to administer oaths and take depositions; that I am well acquainted with his handwriting, and I verily believe that the signature to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 21st day of Aug., 1877.

[SEAL.] (Signed) HARMANN LIEB.

Filed Aug. 24th, 1877.

123 EXHIBIT "A."

CRAWFORD & SOPER, Attorneys-at-law,
EMMETSBURG, IA., *Aug't* —, 1877.

Mrs. DAVIDSON, *Mount Clare, Cook Co., Ills.*

MADAM: By this post we send to Mason B. Loomis, room 21, No. 122 La Salle street, Chicago, interrogatories on the part of the plaintiff & cross-interrogatories on behalf of def't in the cause of H. H. Palmer *v.* A. C. Call, which — are required to answer. And we shall feel obliged by you seeing Mr. Loomis as soon as possible, as we should have the answers here by the 27th instant.

Yours resp't'ly,
(Signed) CRAWFORD & SOPER.

124 *Motion for Rule to Answer Interrogatory* 8 *Annexed to Defendant's Answer fully, &c.*

In the Circuit Court of Palo Alto County, Iowa. Aug. Term, 1877.

H. H. PALMER *v.* ASA C. CALL.

The defendant, Asa C. Call, shows unto this hon. court that at the last term of this court he filed his answer in this cause, annexing thereto certain interrogatories which the plaintiff was ordered to answer by July 1st, 1877, at the time of filing his reply; that said reply

was filed July 21st, 1877; that interrogatory 8 thereof is not fully answered, in this, that certain letters & correspondence between plaintiff and his agents, Burnham, Ormsby & Co., directed to be annexed to his answer, are not produced, & the plaintiff refuses,
125 neglects, & — to produce the same, the same being material to the defense herein. Defendant, therefor-, asks the court to grant a rule in this cause requiring the plaintiff to produce the same forthwith.

II.

The defendant further moves the court to strike from the files in this cause the petition & reply of plaintiff, & to enter judgment herein on defendant's answer & defense, sustaining the same, because the plaintiff refuses & neglects to produce certain letters & correspondence, as he was ordered to do, in answering the interrogatory 8 attached to defendant's answer, by order of court, at the last term hereof, by July 1, 1877, said neglect and refusal being a contempt of court.

(Signed) GEO. E. CLARK &
(Signed) T. W. HARRISON,
Def't's Att'ys.

Filed Aug. 28th, 1877.

126 *Motion to Suppress Dep's.*

In the Circuit Court of Palo Alto Co., Iowa. Aug. Term, 1877.

H. H. PALMER *vs.* ASA C. CALL.

The defendant, Asa C. Call, move the court to suppress & strike from the files in this cause the deposition of Maggie J. Davison on file herein, because—

1st. The caption to the heading does not show when the same was taken.

2nd. There is no jurat attached to said deposition that the same was subscribed & sworn to as required by law.

3d. The certificate does not show that at the time of taking the same the plaintiff, his agent, or att'y, was not present.

(Signed) GEO. E. CLARKE &
(Signed) T. W. HARRISON,
Def't's Att'ys.

Filed Aug. 28th, 1877.

127 *Petition.*

Petition for removal on the ground of citizenship, under the act of March 3, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite in the petition for removal.

128 *Petition for Removal to the Circuit Court of the United States of the District of Iowa.*

In the Circuit Court of Palo Alto County, State of Iowa.

HENRY H. PALMER, Plaintiff, *vs.* ASA C. CALL, Defendant.

To the honorable the circuit court of Palo Alto county, State of Iowa:

Your petitioner respectfully show- to this honorable court that the matter and amount in dispute in the above-entitled suit exceed, exclusive of costs, the sum or value of five hundred dollars. That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit, and still is, a citizen of the State of New Jersey,
129 and that the defendant Asa C. Call was then, and still is, a citizen of the State of Iowa.

And your petitioner offer- herewith a good and sufficient surety for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto. And he prays this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Iowa.

And he will ever pray.

(Signed) GEO. E. CLARKE &
(Signed) T. W. HARRISON,
Attorneys for Petitioner.

Filed Aug. 29th, 1877.

130 STATE OF IOWA, } *ss:*
County of Palo Alto, }

I, Geo. E. Clarke, being duly sworn, do say: That I am the attorney for the petitioner in the above-entitled cause; that I have read the foregoing petition, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

(Signed) GEO. E. CLARKE.

Subscribed by the said Geo. E. Clarke in my presence, and by him sworn to before me, this 29th day of August, A. D. 1877.

[SEAL.] (Signed) T. W. HARRISON,
Notary Public in and for Palo Alto County, Iowa.

"*Bond.*"

Bond for the removal of a cause under the act of March 3d, 1875.

Know all men by these presents, that I, Asa C. Call, as principal,

and Ambrose A. Call, as sureties, are held and firmly bound
131 unto H. H. Palmer in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made unto the said H. H. Palmer, his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Asa C. Call having petitioned the circuit court of Palo Alto county, State of Iowa, for the removal of a certain cause therein pending, wherein H. H. Palmer is plaintiff and Asa C. Call is defendant, to the circuit court of the United States in and for the district of Iowa:

Now, if the said Asa C. Call, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the
132 United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seal-, this 29th day of August, A. D. 1877.

[L. S.] (Signed) ASA C. CALL.
[L. S.] (Signed) AMBROSE A. CALL.

Filed Aug. 29th, 1877.

STATE OF IOWA, } ss:
County of Kossuth, }

I, Ambrose A. Call, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say: That I am a resident of the State of Iowa, and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Iowa liable to execution of the value of more than five hundred dollars.

(Signed) AMBROSE A. CALL.

133 Subscribed in my presence by Ambrose A. Call, and by him sworn to before me, this 29th day of August, 1877.

[SEAL.] (Signed) J. H. HAWKINS,
Notary Public.

134 *Disclaimer.*

In the Circuit Court of Palo Alto County, Iowa.

H. H. PALMER *v.* J. J. WILSON & Co. & others.

Comes now J. J. Wilson & Co., defendants herein, & file a disclaimer of any interest in the subject-matter of this action, or of the lands described in plaintiff's petition & the mortgage thereto annexed, & ask that all costs made as to them be taxed to plaintiff.

(Signed) GEO. E. CLARKE,
Pl'ff's Att'y.

Filed Aug. 29th, 1877.

135 In the Circuit Court, Palo Alto County, Iowa. September Term, 1877.

HENRY H. PALMER *v.* ASA C. CALL and others.

The above-named plaintiff demurs to the petition for removal, filed by the defendant Call herein, upon the following grounds:

First. The application was not made for removal at the first term at which the case could have been tried.

Second. The defendants do not all join in the application for removal.

Third. It does not appear that the parties are such as to entitle the defendant to a removal.

Fourth. The case cannot be removed as to a part of the parties and left in the State court as to other parties.

136 Fifth. The whole case only can be removed.

Sixth. The case cannot be removed in part.

Seventh. The petition is not verified by the defendant, or by any one competent to do so.

(Signed) CRAWFORD & SOPER,
(Signed) & JNO. SPINGER,
Att'ys for Def't.

Filed Aug. 29th, 1879.

Petition.

Petition for removal on the ground of citizenship under the act of March 3, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite in the petition for removal.

137 *Amended Petition for Removal to the Circuit Court of the United States, District of Iowa.*

In the Circuit Court of Palo Alto County, State of Iowa.

H. H. PALMER, Plaintiff,

vs.

ASA C. CALL, W. W. JOHNSON, J. J. WILSON & Co., & the 1ST NAT'L BANK OF FORT DODGE, IOWA, Defendants.

To the honorable the circuit court of Palo Alto county, State of Iowa:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different

138 States, and that the petitioner was at the time of the commencement of this suit, and still is, citizen of the State of Iowa, and that H. H. Palmer, the plaintiff in this cause, was then, and still is, a citizen of the State of New Jersey. That the defendant, W. W. Johnson, was then, and still is, a citizen of the State of Iowa. That the defendants, J. J. Wilson & Co., are a firm doing

business at Algona, Iowa, & was then, and still are, citizens of the State [of] Iowa, and that the 1st National Bank of Fort Dodge, Iowa, was then, & still is, a citizen & corporation of the State of Iowa. Your petitioner states in the said suit above mentioned there is a controversy which is wholly between citizens of different States & which can be fully determined as between them, to wit, a controversy between the said petitioner, Asa C. Call, and the said H. H. Palmer, plaintiff in said cause. And your petitioner offers
139 herewith a good and sufficient surety for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no farther herein, except to make the order of removal required by law and to except the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Iowa.

And he will ever pray.

(Signed) GEO. E. CLARKE &
(Signed) T. W. HARRISON,
Attorney- for Petitioner.

STATE OF IOWA, }
County of Palo Alto, } *ss:*

140 I, Geo. E. Clarke, being duly sworn, do say that I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

(Signed) GEO. E. CLARKE.

Subscribed by the said Geo. E. Clarke in my presence, *by* and by him sworn to before me, this 29th day of August, A. D. 1877.

[SEAL.] (Signed) T. W. HARRISON,
Notary Public in and for Palo Alto Co., Iowa.

141 STATE OF IOWA, }
Palo Alto County, } *ss:*

Be it remembered that at a regular term of the circuit court of Iowa, in and for Palo Alto county, begun and held at the court-house in Emmetsburg on the 27th day of August, A. D. 187–, at which was present Hon. John N. Weaver, sole presiding judge; J. E. King, sheriff of said county, and T. J. Prouty, clerk of said court, and now, on the 28th day of August, A. D. 1877, it being the second day of said regular term, the following proceedings, among others, were had and entered of record, to wit:

HENRY H. PALMER
vs.
ASA C. CALL, W. W. JOHNSON, J. J. WILSON & Co., and 1ST NATIONAL BANK OF FORT DODGE, IOWA. } 180.

142 Now, to wit, this 28th day of August, 1877, defendant, Asa C. Call, files motion for rule to answer, &c.; and afterwards, to wit, on the same day defendant, Asa C. Call files motion to suppress deposition of Maggie J. Davidson.

Now, to wit, this 29th day of August, A. D. 1877, this cause comes up to be heard on the motion to rule, &c., and the court having heard the arguments of counsel thereon, motion overruled by the court. Defendant, Asa C. Call, duly excepts; and afterwards, to wit, on the same day, defendant, J. J. Wilson & Co., file disclaimer, and defendant, Asa C. Call, files petition and bond for the removal of this cause to the United States circuit court; and afterwards, to wit, on the same day plaintiff files demurrer to petition for removal of cause; and afterwards, to wit, on the same day this cause comes on to be heard on the plaintiff's demurrer to petition for removal of cause.

143 And the court having heard the arguments of counsel thereon, the same is taken under *a* advisement of the court.

Now, to wit, this 30th day of August, A. D. 1877, defendant, A. C. Call, files amended petition for removal.

Now, to wit, this 31st day of August, A. D. 1877, this cause comes up to be heard on plaintiff's demurrer to petition for removal of this cause to United States circuit court, and the court having heard the argument of the respective attorneys, the demurrer is overruled by the court, and cause removed to United States circuit court.

The foregoing record read, approved, and signed in open court.

(Signed) JOHN N. WEAVER,
Judge, &c.

144 STATE OF IOWA, } *ss*:
Palo Alto County, }

Be it remembered that at a regular term of the circuit court of Iowa, in and for Palo Alto county, begun and held at the court-house in Emmetsburg, on the 26th day of February, A. D. 1877, at which was present Hon. John N. Weaver, sole presiding judge; J. E. King, sheriff of said county, and T. J. Prouty, clerk of said court. And now, on the 27th day of February, A. D. 1877, it being the second day of said regular term, the following proceedings, among others, were had and entered of record, to wit:

H. H. PALMER
vs.
ASA C. CALL, W. W. JOHNSON, J. J. WILSON & Co., and 1ST NATIONAL BANK OF FORT DODGE, IOWA. } No. 180.

145 Now, to wit, this 27th day of February, A. D. 1877, this cause being reached in its regular order, Crawford & Soper appearing as attorneys for the plaintiff and Geo. E. Clarke and T.

W. Harrison as attorneys for the defendant, Asa C. Call, defendant Asa C. Call files motion for security for costs. And afterwards, to wit, on the same day, the plaintiff confesses motion for security for costs, and thereupon the court fixes the amount of bond at three hundred dollars.

Now, to wit, this 28th day of February, A. D. 1877, the plaintiff files bond for costs.

Now, to wit, this 1st day of March, A. D. 1877, comes the plaintiff, and withdraws bond for costs, and files substitutes. And afterwards, to wit, on the same, the defendant, W. W. Johnson, by Geo. E. Clarke, Esq., his attorney, files disclaimer, and the costs of service of W. W. Johnson are taxed to plaintiff.

146 Now, to wit, this 2nd day of March, A. D. 1877, the defendant, Asa C. Call, files motion to strike exhibits from petition.

Now, to wit, this third day of March, A. D. 1877, the plaintiff files motion to strike from the files the defendant's motion heretofore filed.

Now, to wit, this 5th day of March, A. D. 1877, this cause comes up for a hearing on defendant's motion to strike exhibits from petition, and on plaintiff's motion to strike defendant's motion from the files, and the court having heard the arguments of counsel thereon, said motions are overruled by the court; to which decision the defendant Call duly excepts. And afterwards, to wit, on the same day, defendant Call files answer, and, by consent of parties herein, plaintiff has until July 1st, A. D. 1877, to answer interrogatories in answer and to reply. By consent of parties cause continued.

147 The foregoing record read, approved, and signed in open court.

(Signed) JNO. N. WEAVER,
Judge, &c.

Filing petition	(paid by pl'ff)	1 50
Serving original notice	" "	4 00
Copy of petition for defendant		3 00
Serving notices to take deposition		2 00
Commission to take deposition and postage		1 30
Deposition of Maggie J. Davison		5 00
Transcript & certificate		22 50
		39 30

Fees for transcript, $22.50, paid def't, Asa C. Call.

STATE OF IOWA, }
Palo Alto County, } *ss:*

I, T. J. Prouty, clerk of the circuit court of Iowa in and for Palo Alto county, do hereby certify the above and foregoing to be

148 a full, true, and complete copy of the record and all papers and evidence & entries in the above-entitled cause as on file and rendered by said circuit court as full, true, and complete as the same remains of record & on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, at my office, in Emmetsburg, this 29th day of September, A. D. 1877.

[SEAL.] (Signed) T. J. PROUTY,
Clerk of said Court.

(Endorsed:) Transcript of judgment. Filed in my office, this 4 day of October, A. D. 1877. E. R. Mason, clerk U. S. cir. court.

149 And on the 12th day of October, 1877, a præcipe for appearance of Asa C. Call, defendant, was filed in said cause, which said præcipe for appearance is in the words and figures following, to wit:

150 *Præcipe for Appearance.*

In United States Circuit Court, District of Iowa.

H. H. PALMER, Plaintiff,
vs.
ASA C. CALL, Defendant. } No. —.

The clerk of said court will please enter my appearance for the defendant, Asa C. Call, in above cause and docket the same on the docket.

(Signed) GEO. E. CLARKE,
Def't's Att'y.

(Endorsed:) 969. Filed Oct. 12, 1877. E. R. Mason, clerk.

151 And on the same day, to wit, October 12, 1877, the defendant, Asa C. Call, by his solicitor, filed in said cause his motion to remand this cause to the circuit court of Palo Alto county, Iowa, which motion to remand is in the words and figures following, to wit:

152 In Circuit Court United States, District of Iowa.

H. H. PALMER
vs.
ASA C. CALL and others. } No. 969. Equity.

The above-named plaintiff hereby moves the court to remand this cause to the circuit court of Palo Alto county, Iowa, because the application for the removal thereof to this court was not made at the first term at which the same could have been tried.

(Signed) J. D. SPRINGER,
Att'y for Def't Calls.

(Endorsed:) No. 969. Eq. H. H. Palmer *v.* Asa C. Call and others. Mo. to remand. Filed Oct. 12, 1877. E. R. Mason, clerk.

153 And on the 13th day of October, 1877, in the record of the proceedings of said court is the following entry in said cause, in the words and figures as follow, to wit:

154 United States Circuit Court, District of Iowa. October Term, 1877.

SATURDAY, *October* 13, 1877.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day for hearing on plaintiff's motion to remand, plaintiff appeared by J. D. Springer and defendants by Chas. A. Clark, and the court, upon argument of counsel thereon, being advised, denied said motion.

155 And on the 19th day of October, 1877, a stipulation was filed in said cause, which stipulation is in the words and figures following, to wit:

156 In the Circuit Court of the United States District of Iowa. October Term, 1877.

H. H. PALMER
v.
ASA C. CALL. } No. 969. Ch'y.

It is hereby agreed and stipulated by and between the respective parties to the above entitled cause as follows:

a. The plaintiff shall file replication by November rule day.

b. H. S. Vaughn, of Algona, Iowa, is agreed upon and shall be appointed by the court special examiner, reserving to either party the right to take the testimony of witnesses residing outside of the State on *dedimus*.

c. The proof shall be closed by the first day of the next term.

(Signed) J. D. SPRINGER,
Att'y for Pl'ff.

(Signed) CHAS. A. CLARKE,
Of Counsel for Def't.

157 (Endorsed:) No. 969. Ch'y. H. H. Palmer *vs.* Asa C. Call. Stipulation. Filed Oct. 19, 1877. E. R. Mason, clerk.

158 And on the 27th day of October, 1877, in the record of the proceedings of said court is an entry in said cause, in the words and figures following, to wit:

159 United States Circuit Court, District of Iowa. October Term, 1877.

SATURDAY, *October* 27, 1877.

HENRY L. PALMER
vs.
ASA C. HALL. } No. 969. Eq.

This cause coming on this day for hearing and complainants by leave of court file replication to defendants' answer.

And by stipulation of parties it is ordered that H. S. Vaughn of Algona, Iowa, be and he is hereby appointed examiner to take proofs herein in this State.

It is further ordered that this cause stand continued.

160 And on the 27th day of October, 1877, the complainant, Henry H. Palmer, by his solicitor filed in said cause his replication to the answer of Asa C. Call, defendant, which said replication is in words and figures following, to wit:

161 *The Replication of Henry H. Palmer, Complainant, to the Answer of Asa C. Call, Defendant.*

In the Circuit Court of the United States, Dist. of Iowa. October Term, A. D. 1877.

H. H. PALMER
vs.
ASA C. COLE. } No. 969. Equity.

This replaint, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says: That he will also maintain and prove that his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insuffi-
162 cient to be replied unto by this replaint, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this replaint is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) J. D. SPRINGER,
Solicitor for Complainant.

(Endorsed:) No. 969. Ch'y. Henry H. Palmer *vs.* Asa C. Call. Replication. Filed Oct. 27, 1877. E. R. Mason, clerk.

163 And on the 5th day of December, 1877, a *præcipe* for appearance of E. B. Soper, as solicitor for complainant, was filed in said cause, which said *præcipe* for appearance in the words and figures following, to wit:

164 *Præcipe for Appearance.*

In United States Circuit Court, District of Iowa.

HENRY H. PALMER, Plaintiff,
vs.
ASA C. CALL and others, Defendant. } No. —.

The clerk of said court will please enter my appearance for plaintiff in above cause and docket the same on the equity docket.

(Signed) E. B. SOPER.

(Endorsed:) 969. Eq. Henry . Palmer *vs.* Asa C. Call *et al.* *Præ.* for appearance. Filed Dec. 5, 1877. E. R. Mason, clerk.

165 And on the 7th day of January, 1878, the complainant, by his solicitor, filed in said cause a motion and affidavit for leave to withdraw replication and to file an amended bill, which said motion and affidavit are in the words and figures following, to wit:

166 *Motion for Leave to Withdraw Replication, &c.*

In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

The above-named complainant, Henry H. Palmer, hereby moves, upon the file papers in the above-entitled suit and the affidavit of his solicitor, J. D. Springer, hereto annexed, and the amended bill herewith submitted, for an order for leave to withdraw his replications on file in this suit, and to amend his bill in the particulars shown by said amended —, and for leave to file said amended bill as a substitute for and in lieu of the original bill filed herein, and to dismiss this suit as to all defendants except the principal defendant, Asa C. Call, without prejudice, and that such orders
167 be made without prejudice to the evidence already taken, and without prejudice to the evidence now in the process of being taken.

The complainant offers to file said amended bill *instanter*, and now hereby tenders the same for that purpose.

The complainant further moves that the defendant, Asa C. Call, be ruled to demur or answer said amended bill within ten days after the filing thereof. The complainant offers to submit to such reasonable terms as may be improved for speeding the cause, and to such other reasonable terms as may be improved in other respects.

(Signed) J. D. SPRINGER,
Solicitors for Complainants, Fort Dodge, Iowa.

168 In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

UNITED STATES OF AMERICA, }
District of Iowa, } *ss:*

I, J. D. Springer, being duly sworn, do say: I am one of the solicitors of the above-named complainant, Henry H. Palmer, of the city of New Brunswick, in the State of New Jersey; that as such solicitor I drew the amended bill in the above-entitled suit accompanying this application for leave to amend; that such application is not made, nor is the proposed amendment made, for the purpose of vexation or delay, but in sincerity and good faith; that the matters of such proposed amendment are material to a just determination of said suit.

(Signed) J. D. SPRINGER.

Subscribed in my presence and sworn to before me by the said J. D. Springer, this 5th day of January, A. D. 1878.
(Signed) THOS. SARGENT,
U. S. Commissioner for Dist. of Iowa.

(Endorsed:) No. —. Henry H. Palmer *vs.* Asa C. Call. Mo. for leave to withdraw replication. Filed Jan. 7, 1878. E. R. Mason, clerk.

And on the 18th day of February, 1878, a notice and affidavit as to service of the motion for leave to amend bill was filed in said cause, which notice and affidavit as to service are in the words and figures following, to wit:

In the Circuit Court United States, District of Iowa.

H. H. PALMER
vs.
ASA C. CALL. } No. —. Ch'y.

To the above-named defendant and to George E. Clarke and Charles A. Clark, his solicitors:

You and each of you are hereby notified that the motion for leave to amend his bill in the above-entitled suit heretofore served on you by the above-named complainant, will be brought on for hearing at Iowa City, Iowa, at the hour of three o'clock p. m., on the 23rd day of February, A. D. 1878, before the Hon. James M. Love, one of the judges of the circuit court of the United States in and for the district of Iowa, of which you will take due notice and govern yourself accordingly.
(Signed) J. D. SPRINGER,
Of Sol's for Complainant.

In the Circuit Court, United States District Court.

HENRY H. PALMER
vs.
ASA C. CALL. } No. —. Ch'y.

STATE OF IOWA,
Webster County, } *ss:*

I, J. D. Springer, being duly sworn, do say: That on the 7th day of January, 1878, I sent by mail to Chas. A. Clark, one of the solicitors of record of *of* the above named defendant, a copy of the motion heretofore filed in this suit, and also a copy of the proposed amendment, a copy of the letter accompanying the same, with the response of the said Chas. A. Clark thereto and hereto annexed. That on the 14 day of February, 1878, I mailed to Geo. E. Clark, one of the solicitors of the said defendant, directed and addressed to him at Algona, Iowa, his place of residence, a copy of the annexed notice of the hearing of said motion. And on the 18th day of February, 1878, a like copy of said notice I mailed to

the said Chas. A. Clark, addressed to him at Cedar Rapids, Iowa, his place of residence; that on the 14th day of February, 1878, I also mailed a copy of said notice to the sheriff of Kossuth county, Iowa, where said defendant Call resides and has resided for twenty years last past, with direction to serve the same on the said Call.

I further state that on the 20th day of January, 1878, I mailed to the said Geo. E. Clark a letter duly addressed to him at his place of residence, Algona, Iowa, a copy of which is hereto attached. I further state that I am informed and believe he has received the same. I further state that I have received no response whatever to said letter.

(Signed) J. D. SPRINGER.

174 Subscribed in my presence and sworn to before me by the said J. D. Springer, this 18th day of February, 1878.

[SEAL.] (Signed) C. P. BERRIAN,
Notary Public.

175 O'CONNELL & SPRINGER, Attorneys-at-Law,
FORT DODGE, IOWA, *Jan'y 7th*, 1878.

CHAS. A. CLARK, Esq.,
Cedar Rapids, Iowa.

DEAR COLONEL: Enclosed I send you a copy of motion, &c., for leave to amend bill in Palmer *vs.* Call, with copy of the prepared amended bill, which I desire leave to file. I understand Judge Love will be at Des Moines, Iowa, on the 9th. Will it be agreeable to you to submit the motion then?

Please let me hear from you by return mail.

Yours truly, (Signed) J. D. SPRINGER.

176 N. M. HUBBARD. CHAS. A. CLARK. C. J. DEACON.

HUBBARD, CLARK & DEACON, Attorneys,
CEDAR RAPIDS, IOWA, *Jan. 7th*, 1878.

J. D. SPRINGER, Esq.

DEAR SIR: I have yours of yesterday enclosing motion & aff't to amend & copy of proposed amended bill in Palmer *v.* Call.

It is impossible for me to be at Des Moines on the 9th. I know nothing whatever of this case; never read the pleadings; merely appeared as a matter of accommodation to Geo. at the last term. I can only forward the papers to him, which I will do. He will, of course, accept service of notice fixing some reasonable time to hear motion.

Yours truly, (Signed) CHAS. A. CLARK.

(Endorsed:) Chas. A. Clark. Jan'y 7th, 1878.

177 O'CONNELL & SPRINGER, Attorneys-at-Law,
FORT DODGE, IOWA, *Jan'y 20th*, 1878.

GEO. E. CLARK, Esq., *Algona, Iowa.*

D'R SIR: Ere this the Col. has forwarded you our motion for leave

to file amended bill in Palmer *vs.* Call. When will it suit you to submit motion, & will you accept service of notice of hearing? Please answer by return mail.

Yours truly,
(Signed) O'CONNELL & SPRINGER.

(Endorsed:) Ch'y C. C. U. S. H. H. Palmer *vs.* Asa C. Call. Notice, &c. Filed Feb. 18, 1878. E. R. Mason, clerk.

178 And on the 15th day of May, 1878, a stipulation as to filing amended bill was filed in said cause, which said stipulation is in the words and figures following, to wit:

179 In the Circuit Court United States, Dist. of Iowa.

H. H. PALMER
v.
ASA C. CALL. } No. —. Ch'y.

It is stipulated and agreed in the above entitled suit that on the 25 day of February, 1878, the Hon. James M. Love made an order in due form, permitting the complainant to file the amended bill accompanying the motion for leave to amend submitted by said complainant at the date aforesaid, within five days, giving defendant until April rule day to plead demur or answer thereto, and vacating the stipulation theretofore made as to taking evidence, &c. It is hereby agreed further that as said order has been mislaid that said bill may be filed *nunc pro tunc* as of a time within said five days.

(Signed) GEO. E. CLARKE,
Def't's Sol'rs.

180 (Endorsed:) Palmer *vs.* Call. Stipulation. Filed May 15th, 1878. E. R. Mason, clerk.

181 And on the 15th day of May, 1878, the complainant by his solicitors filed by stipulation of parties an amended and supplemental bill of complaint in said cause, which said amended and supplemental bill is in the words and figures following, to wit:

182 In the Circuit Court of the United States, District of Iowa.

To the judges of the circuit court of the United States for the district of Iowa:

Henry H. Palmer, of the city of New Brunswick, in the State of New Jersey, and a citizen of the State of New Jersey, brings this his amended bill against Asa C. Call, of the town of Algona, in the State of Iowa, and a citizen of the State of Iowa, and thereupon your orator complains and says: That a short time prior to the first day of November, 1872, the said defendant, Asa C. Call, being desirous of obtaining the loan of a large sum of money applied to the firm of Burnham, Ormsby and Company at Emmetsburg, Iowa, to negotiate and procure the same for him. And the said firm of
183 Burnham, Ormsby and Company were then and there a copartnership duly organized and existing under the laws of

the State of Iowa, composed of E. S. Ormsby and A. L. Ormsby, residing at the said town of Emmetsburg, and A. C. Burnham residing at the city of Champaign, in the State of Illinois, and doing business under the firm name and style of Burnham, Ormsby and Company at the said town of Emmetsburg, Iowa, as loan brokers, and from that time hitherto have continued to be engaged in such business.

Your orator further shows that for six years last past, and upwards, the said A. C. Burnham hath been engaged at the said city of Champaign in business on his own private account as a loan broker, and the affairs of said firm of Burnham, Ormsby and Company have at all times been under the active control and management of the said E. S. and A. L. Ormsby.

184 Your orator further says that at the time and place when and where as aforesaid the said defendant, Asa C. Call, applied to the said Burnham, Ormsby and Company to negotiate said loan to the said defendant, Asa C. Call, and the said firm of Burnham, Ormsby and Company made and entered into an agreement, whereby the said firm of Burnham, Ormsby and Company agreed and undertook to negotiate and procure for the said defendant, Asa C. Call, a loan of ten thousand dollars, to be secured by a mortgage upon real estate in the State of Iowa, and to be repaid the lender in three years from the first day of November, 1872, with ten per cent. per annum interest thereon, payable semi-annually, and for their services in negotiating and procuring said loan the said defendant, Asa C. Call, promised and agreed to pay the said Burnham, Ormsby and Company the sum of two thousand dollars.

185 Your orator further says that a short time prior to the first day of November, 1872, one Maggie J. Davidson, then residing at the said city of Champaign, placed in the hands of said A. C. Burnham, of her own funds, the sum of ten thousand dollars in cash to be loaned for her at a lawful rate of interest on good real estate security.

Your orator further says that on or about the first day of November, 1872, the said Burnham, Ormsby and Company, in pursuance of their said agreement with the said defendant, Asa C. Call, negotiated and procured from the said Maggie J. Davison, at the said city of Champaign, through the said agent, A. C. Burnham, for the said defendant, Asa C. Call, the said sum of ten thousand dollars, and on or about the first day of November, 1872, paid the same over to the said defendant, Asa C. Call, at Emmettsburg, Iowa, and

186 the said defendant, Asa C. Call, then and there paid the said Burnham, Ormsby and Company for their services in negotiating and procuring the said loan of ten thousand dollars the said sum of two thousand dollars.

And your orator further says, that on the first day of November, 1872, in consideration of said loan, the said defendant, Asa C. Call, executed to the said A. C. Burnham his principal promissory note, with six coupon interest notes attached thereto, and by said principal note said defendant, Asa C. Call, promised to pay to the order of A. C. Burnham at the banking house of Gilman Sons and Com-

pany, at the city of New York, in the State of New York, on the first day of November, 1875, the sum of ten thousand dollars, with interest thereon at the rate of ten per cent. per annum from and
187 after the first day of November, 1875; and by the first of said interest notes the said defendant, Asa C. Call, promised to pay to the order of A. C. Burnham at the said banking house of Gillman Sons and Company on the first day of May, 1873, as and for the interest on said principal note from the first day of November, 1872, to the first day of May, 1873, the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1873; and by the second of said interest notes the said defendant, Asa C. Call, promised to pay to the order of A. C. Burnham at the said banking house of Gillman Sons and Company on the first day of November, 1873, as and for the interest on said principal note from the first day of May, 1873, to the first day of November, 1873, the sum of five hundred
188 dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of November, 1873; and by the third of said interest notes the said defendant, Asa C. Call, promised to pay to the order of A. C. Burnham at the said banking house of Gillman Sons & Company on the first day of May, 1874, as and for the interests on said principal note from the first day of November, 1873, to the first day of May, 1874, the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1874; and by the fourth of said interest notes the said defendant, Asa C. Call, promised to pay *to pay* to the order of A. C. Burnham at the banking house of Gilman Sons and Company on the first day of November, 1874, as and for the interest on said principal note from the first day of May, 1874, to the first day of November, 1874, the sum of five hundred dollars, with interest thereon
189 at the rate of ten per cent. per annum from and after the first day of November, 1874; and by the fifth of said interest notes the said defendant, Asa C. Call, promised to pay to the order of A. C. Burnham at the banking house of Gilman Sons and Company on the first day of May, 1875, as and for the interest on said principal note from the first day of November, 1874, to the first day of May, 1875, the sum of five hundred [dollars], with interest thereon, at the rate of ten per cent. per annum from and after the first day of May, 1875; and by the sixth and last of said interest notes the said defendant, Asa C. Call, promised to pay [to] the order of A. C. Burnham at said banking house of Gilman Sons & Company on the first day of November, 1875, as and for the interest on said principal note from the first day of May, 1875, to the first day of November, 1875, the sum of five hundred dollars, with in-
190 terest thereon at the rate of ten per cent. per annum from and after the first day of November, 1875.

Your orator further says that on the first day of November, 1872, the said defendant Asa C. Call, in order to secure the payment of the said several promissory notes and the interest thereon as aforesaid, executed and delivered to the said A. C. Burnham a mortgage

in fee-simple upon a large number of pieces, parcels, and tracts of real estate situated in Kossuth county and elsewhere in the State of Iowa, which mortgage was duly filed for record and duly recorded in the offices of the recorders of deeds of the several counties wherein the said real estate was situated, on or about the month of November, 1872.

Your orator further says that the said sum of ten thousand dollars so loaned to the defendant, Asa C. Call, as aforesaid, was
191 the identical fund placed in the hands of the said A. C. Burnham by the said Maggie J. Davison, to be loaned as aforesaid, and that the said notes and mortgage were taken by and in the name of the said A. C. Burnham in trust for the said Maggie J. Davison, although said trust was not expressed upon the face of said notes and mortgage, or either of them.

Your orator further says that the said Maggie J. Davison at no time authorized the said Burnham, Ormsby and Company, or either member of said firm, or the said A. C. Burnham, to charge or receive from the said defendant, Asa C. Call, any commission or compensation whatsoever for negotiating, procuring, or effecting said loan, nor a higher rate of interest or compensation for the use of said loan than ten per cent. per annum thereon, and she in no
192 wise at any time consented thereto, and neither directly nor indirectly received any part of the said two thousand dollars, nor any higher or greater compensation for the use of the said loan of ten thousand dollars than one thousand dollars per annum, and never either directly or indirectly agreed to charge or receive for the use of said loan a greater sum than ten per cent. per annum thereon.

Your orator further says that the said A. C. Burnham at no time disclosed to the said Maggie J. Davison that he had charged or received from the said defendant, Asa C. Call, the said sum of two thousand dollars, or any other sum whatsoever, for effecting or procuring said loan for him until after the commencement of this suit, and the said Maggie J. Davison had no knowledge or information in respect thereto until after the commencement of this suit.

Your orator further says that the said Burnham, Ormsby
193 and Company at no time disclosed to the said Maggie J. Davison that they had charged or received from the said defendant, Asa C. Call, the said sum of two thousand dollars or any other sum whatsoever for effecting or procuring said loan for him until after the commencement of this suit, and the said Maggie J. Davison had no knowledge or information in respect thereto until after the commencement of this suit.

Your orator further says that on or about the first day of May, 1873, the said defendant, Asa C. Call, paid to the said Maggie J. Davison the first of said interest notes in full.

Your orator further says that on the seventeenth day of September, 1873, the said A. C. Burnham applied to your orator, at the city of New Brunswick, to purchase from him, the said A. C. Burnham, the said principal note and mortgage, and the said second,
194 third, fourth, fifth, and sixth of said interest notes, and then

and there offered to sell the same to your orator for the sum of ten thousand three hundred and seventy-seven dollars and eighty cents, which offer your orator then and there accepted, and the said A. C. Burnham then and there endorsed said notes and delivered the same together with the said mortgage to your orator, and your orator then and there paid him therefor in cash the full sum of ten thousand three hundred and seventy-seven dollars and eighty cents.

Your orator further says that he purchased and received said mortgage and paid therefor the said sum of ten thousand three hundred and seventy-seven dollars and eighty cents without any notice or knowledge and without any information or suspicion that any defence or defences, or defect or defects, existed to or in said
195 notes and mortgage, or either of them, and without any notice or knowledge, and without any information or suspicion that a greater sum or value than ten per cent. per annum had been taken, received, or charged for the loan of the said sum of ten thousand dollars by the said A. C. Burnham or Maggie J. Davison.

Your orator further says that by the express terms of said notes and mortgage the same were in all respects to be construed by the laws of the State of Iowa.

And your orator further avers that on or about the 11th (eleventh) day of November, 1873, the said defendant, Asa C. Call, paid to your orator the full amount of the second of said interest notes.

And your orator further says that the said defendant, Asa C. Call, paid to your orator the full amount of the third, fourth, and fifth of said interest notes at the following times: May nineteenth,
196 1874, the third of said notes; November first, 1874, the fourth of said notes, and May fourth, 1875, the fifth of said notes.

And your orator further avers that a short time prior to the first day of November, 1875, the said defendant, Asa C. Call, applied to the said firm of Burnham, Ormsby and Company, at Emmetsburg, Iowa, to negotiate and procure for him a loan of eleven thousand dollars, payable in five years from the first day of November, 1875, with ten per cent. per annum interest thereon, payable semi-annually, and the payment thereof to be secured by a mortgage upon real estate in the State of Iowa, and for their services in that behalf the said defendant, Asa C. Call, agreed to pay the said Burnham, Ormsby and Company five hundred dollars.

And your orator further says that in pursuance of such agreement the said firm of Burnham, Ormsby and Company ap-
197 plied to your orator at the said city of New Brunswick a short time prior to the first day of November, 1875, and negotiated and effected from your orator for the said defendant, Asa C. Call, the loan of the said sum of eleven thousand dollars.

And your orator further says that on the first day of November, 1875, in pursuance of said negotiations your orator delivered and paid to the said firm of Burnham, Ormsby and Company for the defendant, Asa C. Call, the sum of five hundred dollars in cash, and the said principal and said six interest notes and said mortgage and a release and satisfaction pieces of said mortgage duly executed, and in

consideration thereof the said defendant, Asa C. Call, then and there executed to your orator his principal promissory note with ten coupon interest notes attached thereto, and by said principal note the
198 said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of November, 1880, the sum of eleven thousand dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of November, 1880, and by the first of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons & Company, on the first day of May, 1876, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1876, as and for the interest on the said principal note from the first day of November, 1875, to the first day of May, 1876, and by the second of said interest notes the said defendant, Asa C. Call,
199 promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of November, 1876, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of November, 1876, as and for the interest on the said principal note, from the first day of May, 1876, to the first day of November, 1876.

And by the third of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of May, 1877, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1877, as and for the interest on the said principal note from the first day of May, 1877.

200 And by the fourth of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of November, 1877, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. from and after the first day of November, 1877, as and for the interest on the said principal note from the first day of May, 1877, to the first day of November, 1877.

And by the fifth of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of May, 1878, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1878, as and for the interest on the said princi-
201 pal note from the first day of November, 1877, to the first day of May, 1878.

And by the sixth of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the banking house of Gilman Sons and Company, on the first day of November, 1878, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first

day of November, 1878, as and for the interest on the said principal note from the first day of May, 1878, to the first day of November, 1878.

And by the seventh of said interest notes, the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gillman Sons and Company, on the first day of May, 1879, the sum of five hundred and fifty dollars, with interest thereon at the rate of ten per cent. per annum from and after the first day of May, 1879, as and for the interest on the said
202 principal note from the first day of November, 1878, to the first day of May, 1879.

And by the eighth (8) of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking house of Gilman Sons and Company, on the first day of November, 1879, the sum of five hundred and fifty dollars, with interest at the rate of ten per cent. per annum from and after the first day of November, 1879, as and for the interest on the said principal note from the first day of May, 1879, to the first day of November, 1879.

And by the ninth of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking-house of Gilman, Sons and Company, on the first day of May, 1880, the sum of five hundred and fifty dollars, with interest at the rate of ten per cent. per annum, from and after the first day of May, 1880, as and for the interest on the said principal
203 note, from the first day of November, 1879, to the first day of May, 1880.

And by the tenth and last of said interest notes the said defendant, Asa C. Call, promised to pay to the order of your orator, at the said banking-house of Gilman Sons and Company, on the first day of November, 1880, the sum of five hundred and fifty dollars, with interest at the rate of ten per cent. per annnum from and after the first day of November, 1880, as and for the interest on the said principal note, from the first day of May, 1880, to the first day of November, 1880.

Your orator further says, that on the first day of November, 1875, the said defendant, Asa C. Call, in order to secure the payment of said several promissory notes, and the interest thereon, executed a mortgage to your orator in fee simple upon the following-described pieces, parcels, and tracts of real estate situated in
204 Kossuth and Palo Alto counties, to wit:

The northwest quarter of section twenty-two (22), in township ninety-four north, of range twenty-eight west of the 5th P. M., Iowa. All that part of the west fractional half of the northwest quarter of section six, township ninety-five north, of range twenty-eight west of the 5th P. M., Iowa, lying north of the McGregor and Missouri railway, containing sixty-four acres; the southwest quarter of section seven; the west three-fourths of the north half of the southwest quarter of section ten (10), and twenty-six acres off the west side of the southwest quarter of the southwest quarter of section ten; the northeast quarter of the southeast quarter of the southwest quarter;

eighty acres off the north side of northeast quarter of the northeast quarter of the southwest quarter of said section ten, and four acres
205 off the east side of the southwest quarter of the southwest quarter, being one hundred and eighty acres in the said southwest quarter of said section ten; the south half of the north half of section twenty, the northeast quarter of section thirty-three, all in township ninety-five north, of range twenty-nine west of the 5th P. M., Iowa. The northeast quarter of section five in township ninety-five north, of range thirty west of the 5th P. M., Iowa; also blocks ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-eight, thirty, thirty-four, thirty-six, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, sixty, sixty-two, sixty-four, sixty-six, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-six, eighty-eight, ninety-four, ninety-six, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and twenty, one hundred and twenty-six, one
206 hundred and thirty-eight (138), two hundred and twenty, two hundred and twenty-one, the east half of two hundred and twenty-two, two hundred and twenty-five, two hundred and twenty-six, and two hundred and twenty-seven, all in Call's addition to the town of Algona, in Kossuth county, Iowa. The east half of the southwest quarter of section two, the north half of the northwest fractional quarter of section four, the southeast quarter of the northwest quarter, the northeast quarter of the southeast quarter, the west half of the southwest quarter, all in section six (6); the north half of the northwest quarter, the northeast quarter of the southeast quarter, the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter, all in section eight; the southeast quarter of the southeast quarter, and twenty-nine acres off the east side of the southwest quarter of the southwest quarter of section twelve, the south half of the northwest
207 quarter of section fourteen, the north half of the northwest quarter, the southwest quarter of the northeast quarter, the west half of the northwest quarter, the north half of the southeast quarter, the northeast quarter of the southwest quarter of section eighteen, all in township ninety-seven north, of range thirty-one, also the south half of the southeast quarter, the southeast quarter of the southwest quarter, all in section twelve, township ninety-seven north, of range thirty-two west of the 5th P. M., Iowa.

Your orator further says that the said Burnham, Ormsby and Company, at the time of the delivery of the said principal note of ten thousand dollars, and the sixth of the interest notes attached thereto, and the said mortgage securing the same, and the release and satisfaction of such mortgage, surrendered the same to the said defendant, Asa C. Call, who, as your orator is informed and
208 believes, and so charges the fact to be, destroyed said notes and mortgage, and caused said satisfaction price to be recorded in the offices of the recorders of deeds of the counties wherein the real estate is situated, which was included in and covered by said mortgage, and pursuant to said agreement between the said defend-

ant, Asa C. Call, and the said Burnham, Ormsby and Company, and with the express knowledge, consent of the said defendant, Asa C. Call, the said Burnham, Ormsby and Company kept and applied the said five *five* hundred dollars so delivered by your orator to them for the said defendant, Asa C. Call, as aforesaid, to the payment for the services for negotiating and effecting the loan made by your orator to the said defendant, Asa C. Call, as aforesaid. And your orator further says that he surrendered the said note of ten thousand dollars, and the sixth of the interest notes attached
209 thereto as aforesaid, and the mortgage securing the same, and delivered the release and satisfaction of said mortgage and paid said five hundred dollars to the said defendant, Asa C. Call, as aforesaid, and accepted and reviewed therefor as aforesaid, the said note of eleven thousand dollars and the interest note attached thereto, and the mortgage securing the same from the said defendant Asa C. Call, in good faith without any notice or knowledge, and without any information or suspicion that any defect or defects, or any defence or defences existed in or to the said notes and mortgage so executed by the said defendant, Asa C. Call, to the said A. C. Burnham as aforesaid, or to either of them, and without any notice or knowledge, and without any information or suspicion that greater sum or value than ten per cent. per annum had been
210 taken, received, or charged for the loan of the said sum of ten thousand dollars, so made by the said Maggie J. Davison to the said defendant, Asa C. Call, as aforesaid.

Your orator further avers that he at no time authorized the said firm of Burnham, Ormsby and Company to exact or receive from the said defendant, Asa C. Call, the said sum of five hundred dollars so received by them from the said defendant, Asa C. Call, as aforesaid, nor any other sum.

And your orator further says that until after the commencement of this suit he had no knowledge, information, or suspicion that the said Burnham, Ormsby and Company had charged or received, or had agreed to charge or receive, from the said defendant, Asa C. Call, the said sum of five hundred dollars, or any other sum whatsoever, for or on account of the said loan of eleven thousand
211 dollars so made by your orator to the said defendant, Asa C. Call, as aforesaid.

And your orator further says that he hath not received, nor hath he agreed to receive, from the said defendant, Asa C. Call, nor from any other person or persons for the use of said sum of eleven thousand dollars so loaned the defendant, Asa C. Call, as aforesaid, any greater sum or value than ten per cent. per annum thereon.

And your orator further says that by the express terms of the said note of eleven thousand dollars, and the interest notes attached thereto, as aforesaid, and the mortgage securing the same, said notes and mortgage are to be construed by the laws of the State of Iowa.

And your orator further says that on or about the first day of May, 1876, the said defendant, Asa C. Call, paid to your orator the full amount of the first of said interest notes attached to
212 said note of eleven thousand dollars.

Your orator further says that the said mortgage securing

said note of eleven thousand dollars, and the said interest notes attached thereto, covered and included only a very small portion of the real estate covered by the said mortgage from the said defendant, Asa C. Call, to the said A. C. Burnham, as aforesaid.

And your orator further says that the said mortgage from the said defendant, Asa C. Call, to your orator was subject to the condition that if the said defendant, Asa C. Call, should pay or cause to be paid the said several sums of money, with the interest thereon, and secured thereby, as *as* aforesaid, as the same should become due — payable to your orator, then the said mortgage should be void; otherwise, in full force and effect.

213 And your orator further says that by the terms of said note and mortgage, if any of said interest notes or any part thereof became due and remained unpaid for the space of ten days after maturity thereof, then the said principal note and the interest thereon should, at the option of your orator, become immediately due and payable, and said mortgage subject to foreclosure therefor without further notice.

And your orator further says that the second of said interest notes became due and payable to your orator on the first day of November, 1876, and the said defendant, Asa C. Call, for more than fourteen days then next thereafter and before the commencement of this suit, failed and neglected, and from that time hitherto hath failed and neglected, and still fails and neglects, to pay the same or any part thereof.

214 And your orator further says that by the failure of the defendant, Asa C. Call, to pay the second of said interest notes within fourteen days of the maturity thereof as aforesaid, the said principal note of eleven thousand dollars became and was due and payable to your orator at and before the time of the commencement of this suit. And the said defendant, Asa C. Call, hath at all times failed and neglected, and still fails and neglects, to pay said principal note or the interest thereon, or any part thereof, and hath made and still is in default in that respect and behalf, whereby and by reason of all and singular the premises aforesaid, each of said sums of money to wit, the sum of eleven thousand five hundred and fifty dollars, with the interest thereon according to the tenor and effect of the said several promissory notes and the mortgage aforesaid, had become due, were due at the time of the commencement of this suit, and are now due from the said de-

215 fendant, Asa C. Call, to your orator, and the conditions of said mortgage have become, were at the time of the commencement of this suit, and are now in that behalf broken and forfeited.

And your orator further says that by the express terms of said mortgage in the event of a foreclosure thereof, the said defendant, Asa C. Call, was and is to pay to your orator a reasonable solicitors' fee for the services of solicitors in that behalf, to be included in the sums found due upon said notes, and made a part of the decree of foreclosure of said mortgage.

And your orator charges that such reasonable fee is the sum of fifteen hundred dollars.

Wherefore your orator prays that an account may be taken under the direction of this honorable court of what is due to your orator upon said notes and mortgage, and that the defendant, Asa C. Call,
216 may be decreed to pay unto your orator what shall thus appear to be due with his solicitors' fees and the costs of this suit by a short day to be appointed by this honorable court, and in default of such payment the said defendant, Asa C. Call, and all persons claiming by, through, or under him, may be absolutely barred and foreclosed of and from all right of equity of redemption in and to said mortgaged premises, and that your orator may have such other and further relief in the premises as the nature and circumstances of this case may require, and to this honorable court may seem meet.

Your orator further prays that the said defendant, Asa C. Call, may be required by proper order of this court to answer the foregoing amended bill not under oath by a day certain to be fixed by this honorable court.

(Signed) J. D. SPRINGER,
Fort Dodge, Iowa, Solicitor for Complainant.

217 (Endorsed:) No. 969. Eq. United States circuit court, dist. Iowa. Henry H. Palmer *vs.* Asa C. Call. Supplemental bill. Filed by stipulation of parties, May 15, '78, as of February 26, 1878. E. R. Mason, clerk.

218 And on the 17th day of May, 1878, the defendant, Asa C. Call, by his solicitors, filed in said cause an answer to the amended and supplemental bill of complaint, which said answer is in the words and figures following, to wit:

219 In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } In Chancery.

The answer of the defendant, Asa C. Call, to the amended bill of complaint of Henry H. Palmer, complainant.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto saith:

It is not true that this defendant, prior to the first day of November, 1872, applied to the firm of Burnham, Ormsby and Company to negotiate and procure the loan of a large sum of money for him, or any sum of money whatever.

It is true that said firm was, as alleged in the bill, composed of E. S. Ormsby and A. L. Ormsby and A. C. Burnham, but Burnham at the time of the original loan named in the bill was present
220 in the State of Iowa, and himself investigated the security for such money, and loaned the money to this defendant to such amount as is hereinafter set forth. Said firm was and is engaged in doing a general banking business and in loaning their

own money. The active management and control of the affairs of that firm has not been at all on any times under charge of the Ormsbys. It is not true that this defendant and said firm entered into an agreement whereby said firm agreed to negotiate for defendant a loan of ten thousand dollars as alleged in the bill or otherwise, and defendant agreed to pay them two thousand dollars for their services in that behalf.

It is not true that Maggie J. Davidson had, shortly prior to Nov. 1, 1872, placed in the hands of Burnham ten thousand dollars to loan for her, nor that Burnham, Ormsby & Co. procured
221 from said Maggie, through her agent Burnham, the sum of ten thousand dollars, or any other sum, and paid the same over to this defendant; nor that this defendant paid said firm two thousand dollars for procuring such loan.

This defendant did, on or about the 1st day November, 1872, but not in consideration of the pretended loan from Maggie J. Davidson, execute to said A. C. Burnham his principal promissory note for ten thousand dollars, with coupon interest notes attached, substantially as charged in the bill, but for greater certainty therein he craves leave to refer to this same. Said notes drew interest and were payable as alleged in the bill.

To secure the payment of said notes defendant executed to Burnham a mortgage, which was duly recorded as alleged in the bill. But the sole and only consideration for said notes and mort-
222 gage was eight thousand dollars loaned by Burnham to this defendant at or about the date of said notes and mortgage.

The money loaned to defendant was not the money of Maggie J. Davidson. She had no interest therein. It was Burnham's money. The notes and mortgage were given in the name of Burnham, who loaned the money. They were not in trust for Maggie J. Davidson. No trust was expressed on the face of the papers, and none existed in fact. Whether the facts touching the loan were communicated to Maggie J. Davidson this defendant does not know, and cannot state upon knowledge, information, belief, or otherwise.

On the 1st day of May, 1873, defendant paid Burnham the first of said interest notes in full. It is not true that he paid said interest note to Maggie J. Davidson about Sept. 17th, 1873.
223 Said notes and mortgage were assigned and transferred to the complainant, Henry H. Palmer, but whether complainant really purchased the same or paid anything therefor this defendant does not know and cannot set forth. He believes that such transfer was a mere pretense and sham.

It is not true that complainant purchased or received said notes and mortgage without notice, knowledge, or suspicion of defects therein or defences thereto. He was chargeable with notice, had notice, and knew at the time said notes and mortgage were transferred to him that defendant received from Burnham only $8,000 in consideration for said notes and mortgage, and that said principal note covered two thousand dollars of usury.

It is true that defendant paid the second, third, fourth, and fifth of the interest notes attached to the ten thousand dollar note

224 at the times stated in the bill. He paid said interest notes to Burnham, Ormsby & Co. Whether complainant ever received said interest or any part thereof, or was entitled to receive the same, this defendant does not know and cannot set fourth; but he believes that Burnham received and kept all of the money thus paid. This defendant denies that a short time prior to Nov. 1st, 1875, he applied to Burnham, Ormsby and Co. to procure for him *for him* a loan of eleven thousand dollars, payable with interest, as alleged in the bill, and agreed to pay them five hundred dollars for their services in that behalf. He denies that, in pursuance of such pretended agreement, said firm applied to complainant for or negotiated or effected from him a loan of eleven thousand dollars for defendant. Denies that in pursuance of such pretended
225 negotiations the complainant on the 1st day of November, 1875, delivered and paid to said firm for defendant the sum of five hundred dollars, and defendant's said notes and mortgage theretofore executed to Burnham, and assigned by Burnham to complainant, with a release and satisfaction of said mortgage; denies that in consideration of such delivery he executed the notes and mortgage of eleven thousand dollars mentioned in the bill; denies that pursuant to said pretended agreement between defendant and said firm, or with the express knowledge and consent of defendant, said — kept and applied the five hundred dollars which it is pretended in and by said bill complainant delivered to them for defendant to the payment for their pretended services in negotiating said pretended loan.

It is true that on or about the first day of November, 1875,
226 defendant executed to complainant his principal note of eleven thousand dollars, with ten coupon interest notes attached thereto, and a mortgage on lands in Kossuth county, Iowa, substantially as stated in said bill; but for greater certainty defendant craves leave to refer to the said notes and mortgage when the same shall be produced. Said notes and mortgage were executed as hereinafter stated, and not otherwise; that is to say, at the maturity of the ten thousand dollar note and mortgage mentioned in the bill, defendant applied to complainant through his agents, Burnham, Ormsby & Co., for an extension of said ten thousand dollar note for the period of five years; the last coupon interest note of five hundred dollars attached to said ten thousand dollar note was then unpaid. Complainant's said agents, for and on behalf of complainant, proposed
227 and to extend the time of said ten thousand dollar note and interest coupon note of five hundred dollars, in all ten thousand five hundred dollars, if defendant would pay ten per cent. interest thereon semi-annually, and in addition would add to said sum the sum of five hundred dollars unlawful and usurious interest, making in all eleven thousand dollars, and execute to complainant his note for that amount, with interest on the whole sum at ten per cent. per annum, payable semi-annually. This proposition was accepted by defendant, and in pursuance of such unlawful, corrupt, and usurious agreement he executed said note of eleven thousand dollars, with interest coupon notes, as stated in the bill, and also a

mortgage to secure the same, as stated in the bill, and delivered said notes and mortgage to Burnham, Ormsby & Co., as agents of the complainant, who caused said mortgage to be recorded, as
228 alleged in the bill. Whether said notes and mortgage belong to complainant, or he has any interest therein, this defendant does not know and cannot state, but he believes and avers that in fact said notes and mortgage belong to said A. C. Burnham; that he is the real party in interest, and that this suit is for his benefit and use.

At the time defendant executed and delivered to Burnham, Ormsby & Co. said eleven thousand dollar note and mortgage, said firm, as agents of complainant, surrendered and delivered up to him his note of ten thousand dollars to Burnham, with a release and satisfaction piece of his mortgage to Burnham to secure said note, duly executed by complainant, which release defendant caused to be duly recorded; and the delivery and surrender of said ten thousand dollar
229 notes, with the delivery of said release and satisfaction of mortgage, constituted the sole and only consideration for defendant's said note of eleven thousand dollars, with interest coupon notes attached, and the mortgage to secure the same, all of which was well known to complainant and to his agents at the time of the execution and delivery of said notes and mortgage by this defendant.

And this defendant further answering, saith, that at the time he executed and delivered the notes and mortgage last mentioned there was due upon the ten thousand dollar note surrendered to him in consideration thereof no other greater sum than five thousand five hundred dollars for the reason that said note was a corrupt and usurious contract, as hereinafter set forth, the
230 original consideration of which was eight thousand dollars and no more, and defendant had paid thereon the sum of two thousand five hundred dollars, which he was and is entitled to have applied to the payment of the original sum loaned to him by Burnham, of all of which complainant was chargeable with notice and had notice at the time of the execution and delivery of the eleven thousand dollar note and mortgage aforesaid. All statements in the bill to the contrary are not true. It is true that about the first day of May, 1876, defendant paid to Burnham, Ormsby & Co., complainant's agent, five hundred and fifty dollars, the full amount of the first interest coupon note attached to said eleven thousand dollars, and since the date last named defendant has made no payment of principal or interest on said eleven thousand dol-
231 lar note. The mortgage executed by defendant to complainant to secure his eleven thousand dollar note was subject to the condition set out in the bill.

It is not true that the second interest coupon note attached to the eleven thousand dollar note became due and payable on the 1st day of November, 1876, as alleged in this bill, and that by reason of defendant's failure to pay the same said principal note of eleven thousand dollars became at once due and payable. Said principal note was in its inception a corrupt and usurious contract, as is herein-

after set forth, and complainant was and is entitled to no interest whatever thereon. The principal note is not due and payable by reason of defendant's failure to pay interest thereon. The conditions of said mortgage are not broken, nothing is yet due the complain-
232 ant, and he is entitled to no decree of foreclosure or other relief from this court. By the payment made by defendant May 1, 1876, of five hundred and fifty dollars, admitted in the bill, the principal sum due the complainant Nov. 1, 1880, and not sooner, was and is reduced to four thousand nine hundred and fifty dollars.

Any money remitted by complainant to Burnham, Ormsby and Co. in connection with the execution of defendant's eleven thousand dollar note and mortgage, or having reference thereto, was, by express agreement and understanding, to pay them for their services as complainant's agents in procuring from defendant his note and mortgage to complainant for eleven thousand dollars, when, in fact, no more than five thousand five hundred dollars was due from defendant to complainant.

233 It may be true that complainant remitted his said agents five hundred dollars for the purpose and reason aforesaid. They retained the money, divided it between themselves and complainant, and added it to the amount of the note given by defendant as aforesaid. The pretense that it was to pay complainant's said agents for their services to defendant in inducing him to extend his note to complainant for eleven thousand dollars when he owed complainant only half that amount is a mere cloak for adding to the enormous amount of usury already embraced in said eleven thousand dollar note.

And further answering complainant's bill this defendant saith: That by chapter 2 of title 14 of the Code of Iowa for 1873 it is provided that no person shall directly or indirectly contract for
234 or receive any greater rate of interest, in money or property, than ten cents on the hundred by the year, and that in any suit brought on any contract where a greater rate of interest has been contracted for the plaintiff shall have judgment for the principal sum only, without either interest or cost, and there shall be forfeited to the school fund of the county in which suit is brought interest at the rate of ten per centum per annum on the principal sum for which judgment shall be rendered against the defendant.

That prior to the execution of defendant's said note to A. C. Burnham of ten thousand dollars with interest coupon notes attached as set forth in the bill, the said A. C. Burnham and defendant entered into a corrupt, unlawful, and usurious agreement in violation of said statute of Iowa, whereby it was agreed that
235 Burnham should loan to defendant the sum of eight thousand dollars, and that defendant in consideration thereof should execute to said Burnham his note for ten thousand dollars with interest on the whole amount of said ten thousand dollars at ten per centum per annum, thereby reserving to said Burnham two thousand dollars of usurious interest in one lump sum, and also reserving to him two hundred dollars of usury annually in excess of ten per centum per annum on the amount to be loaned defendant.

That in pursuance of such corrupt, unlawful, and usurious agreement between Burnham and this defendant, Burnham did, on the date of said ten thousand dollar note mentioned and described in the bill, loan and advance to defendant eight thousand dollars and no more, and defendant for that and none other consideration
236 executed and delivered said ten thousand dollar note to Burnham, whereby he contracted in violation of said statute to pay, and Burnham in violation thereof contracted to receive two thousand dollars of unlawful and usurious interest on said note in one lump sum at the maturity thereof, and also two hundred dollars of unlawful and usurious interest annually from the *from the* date of said note until the maturity thereof.

That complainant took and received said note with knowledge of such unlawful and usurious contract, and received from defendant annually two hundred dollars unlawful and usurious interest until the maturity of said note, and complainant received the same with notice and knowledge of that fact; that at the maturity of said note defendant had paid interest thereon to Burnham and complainant to the amount of two thousand five hundred dollars, which
237 he was and is entitled to have applied on the principal sum loaned to him by Burnham, which principal sum was thereby reduced to the sum of five thousand five hundred dollars, and no other or greater sum was then due from defendant on said note. That defendant, desiring to procure an extension of said ten thousand dollar note, applied to complainant, through his agents, Burnham, Ormsby & Co., for such extension.

That thereupon, in violation of said statute of Iowa, complainant and defendant entered into a further corrupt, unlawful, and usurious agreement, whereby for the sole and only consideration of the extension of the time of payment of the said note and the last interest coupon note thereto attached until and up to Nov. 1, 1880, this defendant was to execute to complainant his note for eleven thousand dollars with interest on said
238 sum at ten per cent. per annum, payable semi-annually; that in pursuance of such corrupt, unlawful, and usurious agreement, the complainant delivered up to defendant his said note for ten thousand dollars, with the last interest coupon note attached thereto, in consideration of which, and for none other consideration, this defendant unlawfully, and in violation of said statute, executed to complainant his note for eleven thousand dollars, with interest coupon notes attached, as set out in the bill, and thereby contracted to pay, and the complainant contracted to receive, the further sum of five hundred dollars unlawful and usurious interest, in addition to the usury embraced in defendant's original note of ten thousand dollars to Burnham, and also the sum of *of* five
239 hundred and fifty dollars unlawful and usurious interest, annually on the amount due from defendant to complainant on said original note at the time of its renewal and extention as aforesaid. That no other or greater sum than five thousand five hundred dollars was due to complainant on said original note at the time defendant executed the eleven thousand dollar note in renewal

and extension thereof; and on the 1st day of May, 1876, defendant paid complainant thereon the sum of five hundred and fifty dollars, leaving a bulance unpaid of four thousand nine hundred and fifty dollars, and no more, which said sum, by the terms of said note, is not due or payable until Nov. 1st, 1880; and defendant insists that complainant cannot maintain this suit, because said sum of money is not yet due or payable.

All of the negotiations aforesaid occurred, and said notes
240 were executed and all payments thereon were made within the State of Iowa. Said notes were and are Iowa contracts, and subject to the provisions of the statute of Iowa aforesaid.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable
241 costs and charges in this behalf most wrongfully sustained.

(Signed) GEO. E. CLARKE &
(Signed) HUBBARD, CLARK & DEACON,
Sol's for Def't.

(Signed) WRIGHT, GATCH & WRIGHT &
(Signed) CHAS. A. CLARK,
Of Counsel

(Endorsed:) Eq. No. —. Henry H. Palmer *v.* Asa C. Call. Answer to amended bill. Filed May 17, 1878. E. R. Mason, clerk. Geo. E. Clarke & Hubbard, Clark & Deacon, for def't.

242 And on the 27th day of May, 1878, the complainant, Henry H. Palmer, by his solicitors, filed in said cause his replication to the answer of defendant, which said replication is in the words and figures following, to wit:

243 *Replication.*

In the Circuit Court of the United States, District of Iowa.

H. H. PALMER *vs.* ASA C. CALL.

The replication of H. H. Palmer, complainant, to the answer of Asa C. Call, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says: That he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer

of the defendant is uncertain, untrue, and insufficient to be
244 replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

(Signed) J. D. SPRINGER,
Fort Dodge, Iowa, Solicitors for Complainant.

(Endorsed:) 969. Equity. H. H. Palmer *vs.* Asa C. Hall. Replication. Filed May 27, 1878. E. R. Mason, clerk.

245 And on the 27th day of May, 1878, in the record of proceedings in said court is an entry in said cause, in the words and figures following, to wit:

246 United States Circuit Court, District of Iowa. May Term, 1878.

MONDAY, *May* 27, 1878.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day to be heard, and it was ordered that the time for taking proofs herein be enlarged to the October rules and the cause continued.

247 And on the 4th day of November, 1878, in the record of the proceedings in said court is an entry in said cause, in the words and figures following, to wit:

248 United States Circuit Court, District of Iowa. October Term, 1878.

MONDAY, *Nov. 4th*, 1878.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day to be heard was continued.

249 And on the 9th day of November, 1878, in the record of the proceedings in said court is an entry in said cause, in the words and figures following, to wit:

250 United States Circuit Court, District of Iowa. October Term.

SATURDAY, *November* 9, 1878.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day for hearing, and the time for taking testimony was enlarged ninety days from this date.

251 And on the 28th day of May, 1879, in the record of the proceedings in said court, is an entry in said cause, in the words and figures following, to wit:

252 United States Circuit Court, District of Iowa. May Term, 1879.

WEDNESDAY, *May* 28, 1879.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day for hearing on the defendant's exceptions to the deposition of H. L. Palmer, complainant appeared by J. D. Springer, and the defendant by Wright, Gatch & Wright; and the court, after argument of counsel thereon, being fully advised, overruled said exceptions.

253 And on the 30th day of May, 1879, in the record of the procoedings in said court, is an entry in said cause, in the words and figures following, to wit:

254 United States Circuit Court, District of Iowa. May Term, 1879.

FRIDAY, *May* 30, 1879.

HENRY L. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause coming on this day for hearing, complainant appeared by J. D. Springer, and defendant- by Wright, Gatch & Wright, and was submitted to the court on the pleadings and proofs filed, the complainant to file briefs in ten days, the defendant- in thirty days thereafter, and the complainant to reply in ten days thereafter, and the papers and briefs to be sent to Love, J., and the decree to be entered at an adjourned term of the court.

255 And on the 28th day of November, 1879, in the record of the proceedings in said court is a decree in said cause, which said decree is in the words and figures following, to wit:

256 United States Circuit Court, District of Iowa. October Term, 1879.

FRIDAY, *November 28th*, 1879.

HENRY H. PALMER
vs.
ASA C. CALL. } No. 969. Eq.

This cause having been heretofore submitted to the court:

And now, on this 28th day of November, 1879, the court being fully advised in the premises, it is hereby ordered, adjudged, and decreed, that the several allegations contained in the complainants' bill of complaint are true.

Thereupon it is ordered, adjudged, and decreed, and this court doth order, adjudge, and decree that the said respondent, Asa C. Call, pay to the said complainant in this cause, on or before the 10- day of December, 1879, the sum of fifteen thousand four hundred
257 eighty-four & $\frac{46}{100}$ dollars ($15,484.46), with interest at the rate of 10 per cent. per annum, from Nov. 19th, 1879, and the further sum of five hundred dollars ($500.00) as a reasonable attorney's fee, with interest at 6 per cent. from November 19th, 1879, and the costs of this suit, taxed at $—, in default of such payment, it is further ordered, adjudged, and decreed that the lands described in mortgage recited in the complainant's bill of complaint, which bears date November first, 1875, and is recorded in the office for recording deeds in and for the county of Kossuth, in book D, on page 39, and in the county of Palo Alto, in book A, on page 456, in the State of Iowa, *et seq.*, which said lands are in the said mortgage described as follows, viz:

The northwest quarter of section twenty-two (22), township
258 ninety-four (94) north, range twenty-eight (28) west; also, sixty-four (64) acres in the west fractioned half of the northwest quarter of section six (6), township ninety-five (95) north, range twenty-eight (28) west, it being that part of said west fractional half of the northwest quarter situate and being north of the McGregor and Missouri railway; the southwest quarter of section four (4), the southwest quarter of section seven (7), one hundred and eight (108) acres off the southwest quarter of section ten (10), described as follows: The west three-fourths ($\frac{3}{4}$) of the north half of said southwest quarter, twenty-six 26 acres off the west side of the southwest quarter of the southwest quarter, the northeast quarter of the southeast of the southwest quarter; eight (8) acres off the north side of the northeast quarter of the northeast quarter of said southwest quarter, an-
259 four (4) acres off the east side of the southwest quarter of said southwest quarter; the south half of the north half of section twenty (20), and the northeast quarter of section thirty-three (33), all in township ninety-five (95), range twenty-nine; the northeast quarter of section five (5), township ninety-five (95), range thirty (30) west. Also, blocks six (6), ten (10), twelve (12), fourteen (14), sixteen (16), eighteen (18), twenty (20), twenty-two (22), twenty-four (24), twenty-eight (28), thirty (30), thirty-four (34), thirty-six

(36), forty-two (42), forty-four (44), forty-six (46), forty-eight (48), fifty (50), fifty-two (52), fifty-four (54), fifty-six (56), sixty (60), sixty-two (62), sixty-four (64), sixty-six (66), seventy-four (74), seventy-six (76), seventy-eight (78), eighty (80), eighty-two (82), eighty-six (86), eighty-eight (88), ninety-four (94), ninety-six (96), one hundred and four
260 (104), one hundred and six (106), one hundred and eight (108), one hundred and ten (110), one hundred and twelve (112), one hundred and twenty (120), one hundred and twenty-two (122), one hundred and twenty-six (126), one hundred and thirty-eight (138), two hundred and twenty (220), two hundred and twenty-one (221); the east half of two hundred and twenty-two (222), two hundred and twenty-five (225), two hundred and twenty-six (226), and two hundred and twenty-seven (227) in Call's Addition to Algona. The above-described lands, situated in the county of Kossuth, Iowa; also, the east half of the southwest quarter of section two (2); the north half of the northwest fractional quarter of section four (4), the southeast quarter of the northwest quarter, the northeast quarter of the southeast quarter, and the west half of the southwest quarter of section six (6); the north half of the north-
261 west quarter, the northeast quarter of the southeast quarter, the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section eight (8), the southeast quarter of the southeast quarter, and twenty-nine (29) acres off the east side of the southwest quarter of the of southeast quarter of section twelve (12); the south half of the northwest quarter of section fourteen (14).

The north half of the northeast quarter, the southwest quarter of the northeast quarter, the west half of the northwest quarter, the north half of the southeast quarter, and the northeast quarter of the southwest quarter of section eighteen (18), all in township ninety-seven (97) north, range thirty-one (31); also the south half of the southeast quarter and the southeast quarter of the southwest
262 quarter of section twelve (12), township ninety-seven (97) north, range thirty-two (32) west, of the 5th P. M., in Palo Alto county, Iowa, and all containing two thousand three hundred and fifty (2,350) acres, more or less, and are situated in the counties of Kossuth and Palo Alto, in the State of Iowa, aforesaid, be sold at public sale at the door of the United States court-house, at the city of Des Moines, in the State of Iowa, aforesaid, upon due notice, as required by the laws of the State of Iowa in respect to sales on execution; and that the proceeds of said sale, or so much as shall be necessary for that purpose, be applied by the master hereinafter named, as follows:

1st. To the costs of said sale.

2d. To the costs of this suit.

3d. To the payment of debt, interest, and solicitor's fees due to complainant, as herein adjusted.

4th. The residue, if any, to be paid into the depository of
263 this court to abide the further orders of the court.

It is further ordered, adjudged, and decreed, upon request of counsel, that E. R. Mason, Esq., be, and is hereby, appointed a

special commissioner to execute this decree, and the said commissioner, on making sale of the said premises, as herein ordered and decreed, do make and execute unto the purchaser or purchasers of the said lands a certificate containing a description of the property and the amount of money paid by the purchaser, and stating that unless redemption is made in one year thereafter, according to the provisions of the statutes of the State of Iowa governing redemption from sales under execution, he, or his heirs or assigns, will be entitled to a deed for the same.

It is further ordered, adjudged, and decreed that if the said
264 property shall not be redeemed from said sale within one year from and after the date thereof, then and in that case the said commissioner shall execute to the purchaser, or his heirs or assigns, a deed conveying all the right, title, interest, estate, and property of said respondent, Asa C. Call, in and to the said lands, and every part or parcel thereof, as well as the interest of all persons claiming by, through, or under them, or any of tnem, since the date of the mortgage.

It is further ordered, adjudged, and decreed that if said property be not redeemed from sale within one year from the date thereof as aforesaid, the said respondent shall be forever debarred and foreclosed from setting up any right, title, or interest at law or in equity in or to the said above described lands, or any part thereof,
265 and that upon the delivery of the deed to be executed to the purchaser or purchasers as aforesaid, pursuant to this decree, they and each of them, and all persons claiming under them, or any of them, since the said filing of said bill of complaint herein, do immediately surrender and deliver up to the purchaser or purchasers aforesaid the possession of the said lands, and every part thereof.

It is further ordered that the said commissioner shall, as soon as the said sale is made, report the same to this court for its action thereon, and that this cause do stand continued until the execution of this decree.

Thereupon the defendant, by his solicitors, in open court prayed an appeal to the Supreme Court of the United States, which is allowed upon filing a bond in the penal sum of fifteen hun-
266 dred dollars, conditioned as the law directs, with sureties to be approved by one of the judges of this court.

(Signed) J. M. LOVE, *Judge.*

267 And on the 28th day of November, 1878, the affidavits of Wm. Leggett *et al.* in reference to the amount of supersedeas bond were filed in said cause, which said affidavits are in the words and figures following, to wit:

268 In the United States Circuit Court for the District of Iowa.

—— PALMER *vs.* ASA C. CALL *et al.*

STATE OF IOWA, *Kossuth County:*

Wm. Leggett, James Patterson, Charles A. Hurd, being duly

sworn, depose and say, and each for himself says: That he is thoroughly acquainted with the value of real estate in Kossuth and Palo Alto counties, and that the fair market value of the following-described real estate is as follows:

N. W. ¼ Sec. 22, Tp. 94, R. 28, 160 acres, $6.25 per acre, $1,000.00.

64 acres in *in* N. fr'l ½ of N. W. ¼ of Sec. 6, Tp. 95, R. 28, being that part of said tract lying N. of the M., G. & Mo. R'y, $60 per acre, $3,840.00.

S. W. ¼ of Sec. 4, Tp. 95, R. 29, 160 acres, $25 per acre, $4,000.00.

269 S. W. ¼ Sec. 7, Tp. 95, R. 29, 160 acres, $12 per acre, $1,920.00.

108 acres off S. W. ¼ Sec. 10, Tp. 95, R. 29, described as follows, to wit: N. ¾ of N. ½ of said S. W. ¼, & 26 acres off W. side of S. W. ¼ of said S. W. ¼, N. E. ¼ of S. E. ¼ of said S. W. ¼, 8 acres off N. side of N. E. ¼ of N. E. ¼ of said S. W. ¼, 4 acres off E. side of S. W. – of S. W. ¼ of said Sec. 10, $25 per acre, $2,700.00.

S. ½ of N. ½ of Sec. 20, Tp. 95, R. 29, 160 acres, $11 per acre, $1,760.00.

N. E. ¼ Sec. 33, Tp. 95, R. 29, 160 acres, $10 per acre, $1,600.00.

N. E. ¼ Sec. 5, Tp. 95, R. 30, 160 acres, $22 per acre, $3,520.00.

The following blocks in Call's Addition to Algona, Iowa:

Blocks Nos. 6, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 34, 36, 42, 44, 46, 48, 50, 52, 54, 56, 60, 62, 64, 66, 74, 76, 78, 80, 82, 86, 88, 94, 96, 104, 106, 108, 110, 112, 120, 122, 126, 138, 220, 221, E. ½ of 222, 225, 226, & 227, being 48½ blocks, $250 per block, $12,125.00.

270 E. ½ S. W. ¼ Sec. 2; N. ½ N. W. fr'l ¼ Sec. 4; S. E. ¼ of N. W. –, N. E. ¼ of S. E. ¼, and W. ½ of S. W. – of Sec. 6; N. ½ of N. W. ¼, N. E. ¼ of S. E. ¼, S. W. ¼ of S. E. ¼, N. E. ¼ of S. W. – of Sec. 8; S. E. ¼ of S. E. – and 29 acres off the E. side of S. W. ¼ of S. E. ¼ of Sec. 12; S. ½ of N. W. ¼ of Sec. 14; N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, N. ½ of N. W. ¼, N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼ of Sec. 18; all in Tp. 95, R. 31, containing 1,000 acres, $6 per acre, $6,000.00.

S. ½ of S. E. ¼ and S. E. ¼ of S. W. ¼ of Sec. 12, Tp. 97, R. 32, 120 acres, $4 per acre, $480.00.

And the total value thereof is thirty-eight thousand nine hundred and forty-five (38,945) dollars.

(Signed) WM. LEGGETT.
(Signed) JAMES PATTERSON.
(Signed) CHAS. A. HURD.

Subscribed in my presence and sworn to before me by Wm. Leggett, James Patterson, Chas. A. Hurd, this 25th day of November, 1879.

[SEAL.] (Signed) E. H. CLARKE.
Notary Public.

271 (Endorsed:) Palmer *vs.* Call. Aff't in reference & supersedeas. Filed Nov. 28, 1879. E. R. Mason, clerk.

STATE OF IOWA, *Kossuth County:*

Andrew D. Clarke, being duly sworn, on oath deposes and says: That he is acquainted with the value of real estate in Kossuth and Palo Alto counties; that he has examined the foregoing list of real estate covered by a mortgage from Asa C. Call to Henry L. Palmer, and that he is acquainted with the value thereof; that he has made an estimate of the value of said real estate, and would not estimate the value thereof at less than twenty-seven thousand ($27,000.00) dollars, as he verily believes.

Witness my hand, this 25th day of Nov., 1879.

(S'g'd) A. D. CLARKE.

Subscribed in my presence and sworn to before me, this
272 25th day of November, 1879.

[SEAL.] (Signed) F. M. TAYLOR,
Notary Public.

(Endorsed:) Palmer *vs.* Call. Aff't in reference to am't of supersedeas. Filed Nov. 28, 1879. E. R. Mason, clerk.

273 And on the 28th day of November, 1879, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

274 United States Circuit Court, District of Iowa, October Term, 1879.

FRIDAY, *November 28th*, 1879.

HENRY H. PALMER
vs. } 969. Eq.
ASA C. CALL *et al.*

This cause came on this day to be heard upon the application of the defendants by Wright, Gatch & Wright, their solicitors. It is ordered that the amount of the supersedeas bond herein be fixed at the sum of two thousand dollars, with leave to the complainant to make application to increase the amount if he is so advised.

275 And on the 10th day of January, 1880, an appeal bond was filed in said cause, which said appeal bond is in words and figures following, to wit:

276 *Appeal Bond.*

In the United States District Court, District of Iowa.

HENRY L. PALMER *vs.* ASA C. CALL *et al.*

Know all men by these presents that we, Asa C. Call, principal, and J. Harry Call, sure*ties*, are held and firmly bound unto Henry L. Palmer, complainant, in the full and just sum of two thousand dollars, to be paid to the said Henry L. Palmer, his executors, administrators, or assigns; to which payment, well and truly to be

made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 20th December, 1879.

Whereas lately, at a term of the circuit court of the United
277 States, district of Iowa, in a suit depending in said court between Henry L. Palmer, complainant, and Asa C. Call and others, defendants, a decree was rendered and entered against the said Asa C. Call, and the said Call having appealed from said decree of said circuit court to the Supreme Court of the United States at the next term thereof, to be holden on the second Monday of October, 1880, and said appeal having been allowed by said circuit court in open court, and said Call having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse said decree in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said Asa C. Call shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea good, then
278 above obligation to be void; else, to remain in full force and virtue.

Dated December, 1879.

(Signed) ASA C. CALL. [SEAL.]
(Signed) JO. HARRY CALL. [SEAL.]

UNITED STATES OF AMERICA, }
District of Iowa, } *ss:*

I, Jo. Harry Call, being first duly sworn, depose and say: That I am a resident freeholder of the county of Emmet, and that I am the owner of property not exempt from execution to the amount of more than two thousand dollars.

(Signed) JO. HARRY CALL.

Subscribed and sworn to before me by Jo. Harry Call, this 20th day of Dec., 1879, and I hereby approve the above surety.

(Signed) N. B. BENHAM,
Clerk Dist. Court, Kossuth Co., Iowa.

279 Approved Jan'y 9th, 1880.
[SEAL.] (Signed) J. M. LOVE, *Judge.*

(Endorsed:) Filed Jan. 10, 1880. E. R. Mason, clerk.

280 And on the 26th day of January, 1880, a notice of motion by complainant to increase amount of supersedeas bond was filed in said cause, which said notice is in the words and figures following to wit:

281 *Notice of Motion to Increase Amount of Supersedeas Bond.*

In the Circuit Court of the United States for the District of Iowa.

HENRY H. PALMER, Complainant,
vs.
ASA C. CALL, Defendant. } In Vacation.

To the above-named defendant, or to Geo. E. Clarke, Hubbard & Clarke, and Wright, Gatch & Wright, his solicitors:

You are hereby notified that on the 14th day of January, 1880, between the hours of 9 a. m. and 4 p. m., the complainant in the above-entitled cause will submit a motion asking an order increasing the amount of the supersedeas bond in said cause to ten thousand ($10,000) dollars before the Hon. Geo. W. McCrary,
282 judge of the circuit court of the United States for the district of Iowa, at chambers, in the city of Keokuk, Iowa. And in support of said motion he will offer and submit the affidavits of W. H. Ingham, J. E. Stacy, F. M. Taylor, and J. H. Hawkins, O. E. Palmer, E. B. Soper, *E. B. Soper*, J. H. Hawkins, John Reed, M. L. Brown, and J. B. Jones, and a certificate made by John J. Robbins as auditor of Palo Alto county, Iowa, and two certificates of the auditor of Kossuth Co., Iowa, *v.* H. Stough. A copy of said motion and of all of said affidavits are hereto attached, and also a copy of all of said certificates.

(Signed) M. D. O'CONNELL,
Counsel for Complainant.

(Signed) O'CONNELL & SPRINGER,
Solicitors for Complainant.

Service of the within notice duly accepted this 10th day of January, 1880. We also acknowledge receipt of copy of the said
283 notice and of the motion referred to therein, and of the several affidavits and certificates referred to in said notice.

(Signed) WRIGHT, GATCH & WRIGHT,
Att'ys for Call.

(Endorsed:) Henry H. Palmer *vs.* Asa C. Call. Circuit court. Notice of motion, &c. Filed Jan. 26, 1880. E. R. Mason, clerk.

284 And on the 26th day of January, 1880, a motion and affidavits to increase amount of supersedeas bond in said cause was filed by complainant, which said motion and affidavits are in the words and figures following, to wit:

285 *Motion to Increase Amount of Supersedeas Bond.*

In the Circuit Court of the United States for the District of Iowa.

HENRY H. PALMER, Complainant,
vs.
ASA C. CALL, Defendant. } In Vacation.

The complainant moves the court that the amount of the super-

sedeas bond in the above-entitled cause, which was at the October, 1879, term of this court fixed at two thousand ($2,000) dollars, be increased to ten thousand ($10,000) dollars for the following reasons, to wit:

1st. The property covered by and included in the decree is worth very much less than the amount of the judgment in this cause.

286 2d. The interest on the judgment will amount to more than $1,500 per annum, while said appeal is pending, for which there will be no security whatever unless said supersedeas bond should be increased.

3d. The taxes that have become due and payable upon said real estate has not been paid.

4th. The defendant has permitted a large amount of the real estate covered by said mortgage and decree to be sold for taxes, and has neglected and failed to redeem said land from such sales.

5th. The said defendant is insolvent.

6th. Said lands that have been sold for taxes would be certain to go to tax deed and become wholly lost as to security the plaintiff before said cause can be decided in the Supreme Court of the

287 United States, unless the complainant should redeem said land from said sales, which would at this time require about $1,500.

7th. Because this complainant will be compelled during the pendency of the appeal in this cause, owing to the insolvency of the defendants, to invest a large amount of money in paying taxes on said land.

And in support of this motion the complainant offers and submits the affidavits of W. H. Ingham, J. E. Stacy, F. M. Taylor and J. H. Hawkins, O. E. Palmer, E. B. Soper, E. B. Soper, J. H. Hawkins, John Reed, M. L. Brown, and J. B. Jones hereto attached marked respectively Exhibit "A," "B," "C," "D," "E," "F," "G," "H," "J," and "K," and made part hereof, and also the certificate of

288 John J. Robbins as auditor of Palo Alto county, Iowa, marked Exhibit "M," hereto attached and made part hereof, and two certificates of V. H. Stough as auditor of Kossuth county, Iowa, marked respectively Exhibit "L" and "N," hereto attached and made part hereof.

(Signed) M. D. O'CONNELL,
Counsel for Complainant.

(Signed) O'CONNELL & SPRINGER,
Solicitors for Complainant.

It is hereby stipulated and agreed that this motion shall be submitted before Hon. J. M. Love, judge of the United States district court of the district of Iowa, at chambers, in the city of Keokuk, Iowa, on the 22nd day of January, between the hours of 9 a. m. and 4 p. m.

(Signed) M. D. O'CONNELL, *Counsel for Com.*

(Signed) O'CONNELL & SPRINGER,
Solicitors for Complainant.

(Signed) WRIGHT, GATCH & WRIGHT,
Sol's for Call.

289 (Endorsed:) Henry H. Palmer *vs.* Asa C. Call. U. S. cir. court. Motion for increase of supersedeas bond. Filed Jan. 26, 1880. E. R. Mason, clerk.

Ex. "A."

STATE OF IOWA, *Kossuth County:*

W. H. Ingham, being duly sworn, depose and say that: I have resided at Kossuth county for the past 23 years and during the greater part of that time have been engaged in real estate business, buying and selling lands in Kossuth county, Iowa, on my own account and for other parties, and am acquainted with the values and prices of lands in said county, and am acquainted with the hereinafter described lands, and own or are interested in lands contiguous
290 or in the neighborhood of many of them. That I consider the sum set opposite the hereinafter described lands as the fair values thereof in cash or its equivalent, viz:

N. W. ¼, Sec. 22, T'p 94, R. 28	$5 to 10
Pt. W. ½, N. W. ¼, Sec. 6, T'p 95, R. 28 (64 A.)	$30 to 50
S. W. ¼, Sec. 4, T'p 95, R. 29	$20
S. W. ¼, Sec. 7, T'p 95, R. 29	$10 to 15
Pt. S. W. ¼, Sec. 13, T'p 95, R. 29, (108 A.)	$15 to 20
S. ½ N. W. ¼, Sec. 20, T'p 95, R. 29	$10 to 12
N. E. ¼, Sec. 33, T'p 95, R. 29	$6 to 10
N. E. ¼, Sec. 5, T'p 95, R. 30	$25 to 20

That it is very difficult to fix an arbitrary cash value on land because sales are slow and few are made for cash at the present time. Total value, ——

(Signed) W. H. INGHAM.

Sworn to before me and subscribed in my presence by W. H. Ingham, this 31st day of December, 1879.

[SEAL.] (Signed) J. H. HAWKINS,
Notary Public.

Ex. "B."

291 STATE OF IOWA, *Kossuth County:*

J. E. Stacy being duly sworn, depose and say that: I am engaged in the real estate business and have been for about twenty years in Kossuth county, Iowa, and have been for many years agent for the sale of the lands of the American Immigrant Company consisting of many thousand acres, and am well acquainted with prices and values of lands in Kossuth county, Iowa, and well acquainted with the following-described lands.

That their reasonable fair cash value is the same set opposite their respective descriptions.

That but a small portion of said lands are improved, and that the improvements on all such tracts are duly considered and valued herein.

That such valuation is about the price at which similar
292 lands similarly situated sells for at private sale for cash or its equivalent.

I further say that I believe said values are considerably greater than said lands would sell for at master- sale or under execution.

That I am not related to either party in the suit of Palmer or Call, nor interested in the subject-matter of said action.

That I value the—

N. W. ¼,	Sec.	22,	T'p	94,	R. 28 at	$800
P't N. ½ N. W. ¼,	"	6,	"	95,	" 28, 64 A.	$1,920
S. W. ¼,	"	4,	"	95,	" 29	$2,400
S. W. ¼,	"	7,	"	95,	" 29	$1,600
P't S. W. ¼,	"	10,	"	95,	" 29, 108 A.	$2,160
S. ½ N. W. ¼,	"	20,	"	95,	" 29	$800
N. E. ¼,	"	33,	"	95,	" 29	$960
N. E. ¼,	"	5,	"	95,	" 30, not acquainted with	

And the total value of said lands $10,640

(Signed) J. E. STACY.

Sworn to before me and subscribed in my presence by J. E. Stacy, this 31st day of December, 1879.

[SEAL.] (Signed) J. H. HAWKINS,
Notary Public.

293 Ex. "C."

Affidavit.

District of Iowa.

HENRY H. PALMER *against* ASA C. CALL.

STATE OF IOWA, *Kossuth County:*

We, F. M. Taylor and J. H. Hawkins, being each first duly sworn depose and say:

That we have resided in Algona, Iowa, ten and eight years respectively, and engaged in the law and real estate business during all that time, and are well acquainted with the prices and values of town property in Algona. That we have each made a careful personal inspection of the hereinafter described property for the purpose of ascertaining its quality, location, and value. That said lots and blocks are remote from the town of Algona, some of them
294 — & some of them low, wet, and sloughy, & some are high rolling land, others rough and broken, and situated in the breaks of the Des Moines river, and are of very little value, except for farming or grazing purposes, and some are too wet for either. That the reasonable fair cash value of the hereinafter described property is the sum set opposite the description thereof, and that such sum is fully equal to the price at which similar real estate, town lots, and blocks similarly situated sells for at private sale for cash, or its equivalent, and are considerably greater than the price said

property would sell for on execution at sheriff's or master's sale, as we verily believe. We further say that we are not related to either party to this suit, and are not in the employ of either party
295 as attorney, nor otherwise, and are wholly disinterested in the subject-matter of this action and the results thereof; said property being described as follows: Call's Addition to the town of Algona, Iowa.

All of block	No. 6	we value at	$10 00
"	10	"	25 00
Ford			35 00
All of blocks	No. 12	we value at	10 00
"	14	"	25 00
"	16	"	15 00
"	18	"	20 00
"	20	"	40 00
"	22	"	35 00
"	24	"	40 00
"	28	"	25 00
"	30	"	25 00
"	34	"	35 00
"	36	"	10 00
"	42	"	40 00
"	44	"	30 00
"	46	"	10 00
"	48	"	10 00
"	50	"	15 00
"	52	"	25 00
"	54	"	50 00
"	56	"	75 00
296 "	60	"	40 00
"	62	"	25 00
"	64	"	25 00
"	66	"	10 00
"	74	"	40 00
"	76	"	50 00
"	78	"	30 00
"	80	"	10 00
"	82	"	20 00
"	86	"	10 00
"	88	"	75 00
"	94	"	40 00
For'd			$945 00
			945 00
All of blocks	No. 96	we value at	10 00
"	104	"	5 00
"	106	"	5 00
"	108	"	30 00
"	110	"	20 00
"	112	"	10 00

All of blocks	No. 120	we value at		$150 00
"	122	"		25 00
"	126	"		100 00
"	138	"		50 00
"	220	"		100 00
"	221	"		350 00
"	225	"		200 00
"	226	"		125 00
297 "	227	"		400 00
Each half of	222	"		75 00
				$2,600 00

(Signed) F. M. TAYLOR.
J. H. HAWKINS.

Sworn to before me and subscribed in my presence by F. M. Taylor & J. H. Hawkins the 31st day of Dec., 1879.

[SEAL.] (Signed) B. F. REED,
Notary Public.

298 Ex. "D."

Affidavit.

In Circuit Court, District of Iowa.

H. H. PALMER *vs.* ASA C. CALL.

STATE OF IOWA, *Kossuth County:*

O. E. Palmer, being first duly sworn, deposes and says: That he is and has been for ten years land agent of the McGregor and Mo. River Railway Company: that said company own large quantities of land in township No. 97, range 31 west, in Palo Alto county, Iowa, and that he has had occasion to examine said lands for the purpose of ascertaining their quality and value, and that he is well acquainted with the quality and value of the hereinafter-de-
299 scribed lands, and that the reasonable and fair cash value of said land is about as follows, to wit:

E. ½ S. W. ¼ 2, 97, 31, value	$280 00
N. ½ N. W. ¼ 4	280 00
S. E. ¼ N. W. ¼ N. E. ¼ S. E. ¼ & N. ½ S. W. ¼ 6	560 00
N. ½ N. W. ¼ N. E. ¼ S. E. ¼ S. W. ¼ S. E. ¼ & N. E. ¼ S. W. ¼ 8	700 00
S. E. ¼ S. E. ¼ & east 29 a. of S. W. ¼ S. E. ¼ 12	241 50
S. ½ N. W. ¼ 14	280 00
N. ½ N. E. ¼ & S. W. ¼ N. E. ¼ 18	420 00
W. ½ N. W. ¼ N. ½ S. E. ¼ & N. E. ¼ S. W. ¼ 18	700 00
S. ½ S. E. ¼ 12, 97, 32, value	$280 00
S. E. ¼ S. W. ¼ 12, 97, 32	140 00
Total value	$3,881 50

I further say that said valuation is greater than said lands would sell for at forced sale on execution, but such prices as are asked and received at private sale for similar lands similarly situated.

(Signed) O. E. PALMER.

Sworn to and subscribed before me by the above-named O. E. Palmer, this 13 day of December, 1879.

[SEAL.] (Signed) LEWIS H. SMITH,
Notary Public.

300 Ex. "E."

STATE OF IOWA, *Palo Alto County:*

I, E. B. Soper, being first duly sworn, depose and say: That I am agent and attorney for Henry H. Palmer in his foreclosure suit in the U. S. circuit court against Asa C. Call; that I reside in Emmetsburg, Palo Alto County, Iowa; that I have been engaged in business in Emmet and Palo Alto counties for more than eight years as an attorney and dealer in real estate on my own account and for others, and am acquainted with the values of real estate in Palo Alto and Kossuth counties, Iowa; that I have spent more than two days in examining the lands and town property covered by the mortgage from Call to Palmer, and now advertised for sale at master's sale for January 24th, 1880, under decree of foreclosure,
301 and investigating the value of the property for the purpose of preparing the plaintiff's bids for the said property by tracts and parcels; that said values of the said hereinafter-described property were fixed with a full knowledge that the said Asa C. Call, defendant, is wholly insolvent, and that the plaintiff has no reasonable prospect of ever realizing anything upon his said claim, except from the property included in said mortgage.

That the description of the property and the values attached thereto are a correct copy of the list furnished J. D. Springer, Esq., pl'ff's solicitor, with instructions to bid the amount for said property annexed to each description, and no more, at the sales thereof; that I am thoroughly satisfied that the said values and bids are the full values in cash for said property, and that any greater
302 values are merely speculative, and that the aggregate of said bid, viz., $15,690.00 in cash, would be very much preferable to the whole of said property, and that I am satisfied that with $12,000.00 in cash I could buy in Kossuth and Palo Alto counties much more preferable and valuable real estate at this time.

Lands in Palo Alto county.			For
E. ½ S. W. ¼	Sec. 2, 97, 31, we bid	----------	$200
N. ½ f. N. W. ¼	4,	----------	155
S. E. ¼ N. E. ¼	6,	----------	100
N. E. ¼ S. E. ¼	6,	----------	100
N. f. ½ S. W. ¼	6,	----------	175
N. ½ N. W. ¼	8,	----------	200
N. E. ¼ S. E. ¼	8,	----------	100
			$1,030

	Eor'd				$1,030
S. W. ¼ S. E. ¼,	8,	97,	31		$100
29 acres in S. W. ¼ S. E. ¼	Sec. 12,	97,	31		75
S. E. ¼ S. E. ¼	12,				100
S. ½ N. W. ¼	14,				200
N. ½ N. E. ¼	18,				200
S. W. ¼ N. E. ¼	18,				100
W. f'l ½ N. W. ¼	18,				170
303 N. ½ S. E. ¼	Sec. 18,	Tp. 97,	R. 31		200
N. E. ¼ S. W. ¼	18,				100
S. ½ S. E. ¼	12,	97,	32		200
S. E. ¼ S. W. ¼	12,				100

Call's Addition to Algona.

All block No.	6	$5
	10	15
	12	5
	14	15
	16	10
	18	10
	20	25
	22	20
	24	25
	28	15
	30	15
	34	20
	36	5
	42	25
	44	20
	46	5
	48	5
	50	10
	52	15
	54	35
		$2,875
304 All of block	56	$50
	60	25
	62	15
	64	15
	66	5
	74	25
	76	35
	78	20
	80	5
	82	10
	86	5
	88	50
	94	25
	96	5

All of block	104	don't want	----
	106	" "	----
	108		$20
	110		10
	112		5
	120		100
	122		20
	126		75
	138		30
	220		75
	221		275
East half of block	222		125
All of block	225		150
	226		100
305 All of block	227		300

Lands in Kossuth county.

N. W. ¼	Sec. 22, 94, 28		740
P't W. ½ N. W. ¼	6, 95, 28	(64 acres)	1,600
			$6,790
	For'd		$6,790
S. W. ¼	Sec, 4, T'p 95, R. 29		2,000
S. W. ¼	7, " "		1,300
P't S. W. ¼	10, " "	(108 acres)	1,800
S. ½ of N. ½	20, " "		1,000
N. E. ¼	33, " "		600
N. E. ¼	5, " 95, " 30		2,200
	Total amount of pl'ff's bids		$15,690

(Signed) E. B. SOPER.

Sworn to before me and subscribed in my presence by E. B. Soper, this 1st day of January, 1880.

[SEAL.] (Signed) T. R. CRAWFORD,
Notary Public, Palo Alto Co., Iowa.

306 Ex. "F."

STATE OF IOWA, *Palo Alto County:*

E. B. Soper, being duly sworn, says: He has known the defendant, Asa C. Call, for the past eight years, and know his financial condition, and that the said Call is wholly insolvent. That during the past year I have prosecuted four suits to recover large amounts against him, and have had others offered, and have investigated his condition thoroughly for the purpose of ascertaining what, if anything, could be recovered of him on execution, and found he had no property.

(Signed) E. B. SOPER.

Sworn to before me and subscribed in my presence by E. B. Soper, this 1st day of January, 1880.

[SEAL.] (Signed) T. R. CRAWFORD,
Notary Public in and for Palo Alto County, Iowa.

(Endorsed:) Affidavit of E. B. Soper.

307 Ex. "G."

Affidavit.

In the U. S. Circuit Court, District of Iowa.

H. H. PALMER *vs.* A. C. CALL.

STATE OF IOWA, } *ss:*
Kossuth County, }

I, J. H. Hawkins, being duly sworn, depose and say: That I am well acquainted with Asa C. Call, and know his financial condition. That said Asa C. Call has no real estate in said county, but what is incumb-red and to its full value, and no personal property whatever liable to execution, and is wholly insolvent.

(S'g'd) J. H. HAWKINS.

Subscribed in my presence and sworn to before me by the said J. H. Hawkins, this 31st day of December, A. D. 1879.

[SEAL.] (Signed) A. D. CLARKE,
Notary Public within and for Kossuth Co., Iowa.

308 Ex. "H."

Affidavit.

In the U. S. Circuit Court, District of Iowa.

H. H. PALMER *vs.* A. C. CALL.

STATE OF IOWA, } *ss:*
Kossuth County, }

John Reed, being duly sworn, depose- and say-: That I am well acquainted with Asa C. Call, and know his financial condition; that said Asa C. Call has no real estate in said county subject to execution.

(Signed) JOHN REED,
Recorder of Kossuth County, Ia.

Subscribed in my presence and sworn to before me by the said John Reed, this 31st day of December, A. D. 1879.

[SEAL.] (Signed) J. H. HAWKINS,
Notary Public within and for Kossuth County, Iowa.

309 Ex. "I."

Affidavit.

In Circuit Court U. S. A., District of Iowa.

H. H. PALMER *vs.* A. C. CALL.

STATE OF IOWA, *Palo Alto County:*

M. L. BROWN, being duly sworn, says: That he has been engaged in the business of buying and selling real estate in Palo Alto county for the past eight years, and is well acquainted with the value of real estate in Palo Alto county. That the lands in township No. 97, range 31 west, are probably as poor as any in the county, and as little salable as valuable.

310 That the E. ½ S. W. ¼ 2; N. ½ N. W. ¼ 4; S. E. ¼ N. W. ¼ N. E. ¼ E. ¼ & W. ½ S. W. ¼ 6; N. ½ N. W. ¼ N. E. ¼ S. E. ¼ S. W. ¼ S. E. ¼ & N. E. S. W. ¼ 8; the S. E. ¼ S. E. ¼ & E. 29 acres of S. W. ¼ S. E. ¼ 12; S. ½ N. W. ¼ 14; N. ½ N. E. ¼ & S. W. ¼ N. E. ¼ 18; and N. ½ N. W. ¼ N. ½ S. E. ¼ & N. E. ¼ S. W. ¼ of sec. 18, t'w'p 97, R. 31 west, and S. ½ S. E. ¼ & S. E. ¼ S. W. ¼ sec. 12, t'w'p 97, range 32 west, does not exceed $3.50 per acre, and this I regard as a good fair average cash value for said lands, amounting in the aggregate to $3,818.50.

I further say that said valuation is much greater than the price the said lands would sell for at forced sale on execution, but are such prices as are asked and received at private sale for similar lands similarly situated.

(Signed) M. L. BROWN.

Sworn to before me and subscribed in my presence by M. L. Brown, this 18th day of December, 1879.

[SEAL.] (Signed) T. R. CRAWFORD,
Notary Public in and for Palo Alto County, Iowa.

311 Ex. "K."

Affidavit.

In the Circuit Court U. S., District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

STATE OF IOWA, *Kossuth County:*

J. B. Jones, being first duly sworn, deposes and says: That he has been engaged in business as real estate agent, abstracts of title, and surveyor for the past ten years at Algona, Iowa, and am thoroughly acquainted with the prices and value of real estate in Kossuth county, Iowa, and with the prices and values of lots and blocks in Algona, Iowa, at the present time. That the blocks and lots here-

inafter described as in Call's Addition to the town of *of* Al-
312 gona are mostly situated remote from the business portion of the town of Algona, as appears from the attached plat marked Exhibit "A," which shows the relative location of Call's Addition to the town of Algona.

That said town of Algona contains a population of about 1,200, of which number not over 150 reside on the part shown on said plat as "Call's Addition."

That I have made a careful personal inspection of the hereinafter described town property for the purpose of ascertaining their location and value. Some of said blocks are low, wet, and sloughy, others rough and broken, and situated in the brakes of the Des Moines river, and are of very little value, except for farming or grazing purposes, and some are to- wet for either.

313 That the reasonably fair cash value of the hereinafter described property is the sum set opposite the descriptions thereof, and that such sum is fully equal to the price at which similar real estate, town lots and blocks similarly situated, sells for at private sale, for cash or its equivalent, and are considerably greater than the prices said property would sell for on execution at sheriff's or master's sale.

I further say that I am not related to either party to this suit, and am not in the employ of either party as attorney nor otherwise, and am wholly disinterested in the subject-matter of this action and the result thereof, said property being described as follows:

Call's Addition to the town of Algona, Iowa.

All of block No.	6	I value at	----------	$15
"	10	"	----------	25
"	12	"	----------	15
314 All of block No.	14	*we* value at	----------	30
"	16	"	----------	15
"	18	"	----------	20
"	20	"	----------	40
"	22	"	----------	35
"	24	"	----------	40
"	28	"	----------	30
"	30	"	----------	25
"	34	"	----------	35
"	36	"	----------	15
"	42	"	----------	40
"	44	"	----------	30
"	46	"	----------	10
"	48	"	----------	15
"	50	"	----------	15
"	52	"	----------	30
"	54	"	----------	50
"	56	"	----------	75
				605

	For'd			$605
All of block No.	60	*we*	value at	40
"	62	"	"	25
"	64	"	"	25
"	66	"	"	10
"	74	"	"	40
"	76	"	"	50
"	78	"	"	30
"	80	"	"	10
315 "	82	"	"	20
"	86	"	"	10
"	88	"	"	75
"	94	"	"	40
"	96	"	"	10
"	104	"	"	5
"	106	"	"	5
"	108	"	"	30
"	110	"	"	20
"	112	"	"	10
"	120	"	"	150
"	122	"	"	25
"	126	"	"	100
"	138	"	"	50
"	220	"	"	100
"	221	"	"	400
"	225	"	"	200
"	226	"	"	125
"	227	"	"	400
East half of	222	"	"	300
	Total value of town lots			$2,910

And I value the following described lands at the sums set opposite their respective descriptions—

The N. W. ¼	Sec.	22,	T'p	94,	R. 28	$960
P't N. ½ N. W. ¼	Sec.	6,	T'p	95,	R. 28, 64 a.	1,920
316 The S. W. ¼	Sec.	4,	T'p	95,	R. 29	2,400
" S. W. ¼	"	7,	"	"	"	1,600
P't S. W. ¼	Sec.	10,	T'p	95,	R. 29, 108 a.	2,160
S. ½ N. ½	"	20,	"	"	"	640
N. E. ¼	"	33,	"	"	"	800
N. E. ¼	"	5,	"	R. 30		2,805
Total value of lands						13,285

(Signed) J. B. JONES.

Sworn to before me, and subscribed in my presence by J. B. Jones, this 31st day of December, 1879.

[SEAL.] (Signed) J. H. HAWKINS,
Notary Public.

(Here follows diagram, marked page 317.)

318 Ex. "L."

STATE OF IOWA, } ss:
Palo Alto County, }

I, John J. Robbins, auditor of said county, do hereby certify that the following described lands have been sold for taxes, and that the sums set opposite the respective descriptions are the amounts necessary to redeem the same from said sales, viz:

Description.	Sec.	Twp.	Re.	To whom sold.	Amount to redeem
E. ½ S. W. ¼	2	97	31	A. S. McGranty	$40 72
N. fr. ½ N. W. ¼	4	"	"	"	30 73
S. E. ¼ of N. W. ¼	6	"	"	"	20 36
N. E. ¼ of S. E. ¼	6	"	"	T. R. Crawford and assigned to F. C. Burley	12 37
W. fr. ½ S. W. ¼	6	"	"	A. S. McGranty	35 26
N. ½ N. W. ¼	8	"	"	"	40 72
N. E. ¼ S. E. ¼	8	"	"	"	20 36
S. W. ¼ S. E. ¼	8	"	"	"	20 36
N. E. S. W. ¼	8	"	"	"	20 36
29 acres of S. W. S. E. ¼	12	"	"	"	15 03
S. E. S. E. ¼	12	"	"	"	20 36
S. ½ N. W. ¼	14	"	"	"	40 72
N. ½ N. E. ¼	18	"	"	"	40 72
S. W. N. E. ¼	18	"	"	"	20 36
W. fr. ½ N. W. ¼	18	"	"	"	37 68
319 N. ½ S. E. ¼	18	"	"	"	40 72
N. E. S. W. ¼	18	"	"	"	20 36
S. ½ S. E. ¼	12	97	32	"	40 72
S. E. S. W. ¼	12	"	"	"	20 36

I further certify that the above and foregoing includes all the sales made on the above lands remaining unredeemed from sale at this date.

Witness my hand and the seal of said county, this 18th day of December, A. D. 1879.

[SEAL.] (Signed) JOHN J. ROBINS,
Auditor.

(Endorsed:) Palmer *vs.* Call *et al.* Certificate of J. J. Robins. Filed Jan. 26, 1880. E. R. Mason, clerk.

320 Ex. "M."

STATE OF IOWA, } ss:
Kossuth County, }

I, V. H. Stough, auditor of said county, do hereby certify that the following list of lands and town lots have been sold for taxes, and that it will require the amount set opposite each of said tracts to redeem it to date; and I further certify that after a careful exam-

ination of the books in my office that I cannot find any other unredeemed sales on the said lands and town lots except as shown below.

Description.	To whom sold.	Amount to redeem to date.
N. W. 22, 94, 28	D. DeShields	$115 25
P't W. ½ N. W. ¼ 6, 95, 28	A. D. Clarke	69 96
S. W. ¼ 4, 95, 29	A. E. Wheelock	76 87
S. W. ¼ 7, 95, 29	" "	69 83
108 a. off S. W. ¼ 10, 95, 29	A. D. Clarke, D. DeShields, and J. B. Jones	72 62
S. ½ N. ½ 20, 95, 29	A. D. Clarke	88 13
N. E. ¼ 33, 95, 29	" "	88 13
N. E. ¼ 5, 95, 30	A. E. Wheelock, D. DeShields	111 27

Witness my hand and official seal, this 18th December, 1874.

[SEAL.] (Signed) V. H. STOUGH,
Co. Auditor, Kossuth Co.

321 Ex. "N."

STATE OF IOWA, }
Kossuth County, } *ss:*

I, V. H. Stough, county auditor of said county, do hereby certify that the following list of lots have been sold for taxes, and it will require the amount set opposite each tract to redeem it, figured up to date.

And I further certify that I cannot find any other unredeemed sales on said lands, except as shown below:

Block.	No.	Description.	To whom sold.	Am't required to redeem.
Block	6.	Call's Addition to Algona.	D. De Shields.	2 85
"	10.	"	"	2 85
"	12.	"	"	3 10
"	14.	"	"	3 00
"	16.	"	"	2 15
"	18.	"	"	2 90
"	20.	"	"	3 10
"	22.	"	"	8 75
"	24.	"	"	3 15
"	28.	"	"	2 85
"	30.	"	"	3 10
"	34.	"	"	2 85
"	36.	"	"	3 45

322

Block	42.	"	"	3 11
"	44.	"	"	3 05
"	46.	"	"	3 05
"	48.	"	"	2 45
"	50.	"	"	3 11

Ex. "N"—Continued.

Block.	No.	Description.	To whom sold.	Am't required to redeem.
Block	52.	Call's Addition to Algona.	D. De Shields.	4 45
"	54.	"	"	3 18
"	56.	"	"	3 95
"	60.	"	"	3 30
"	62.	"	"	3 05
"	64.	"	"	3 66
"	66.	"	"	3 50
"	74.	"	"	3 85
"	76.	"	"	3 41
"	78.	"	D. De Shields, except lot 1.	3 28
"	80.	"	D. De Shields.	2 03
"	82.	"	"	2 85
"	86.	"	"	1 70
"	88.	"	"	3 65
"	94.	"	"	3 60
"	96.	"	"	3 43
"	104.	"	"	2 69
"	106.	"	"	1 85
"	108.	"	"	1 28
"	110.	"	"	8 13
"	112.	"	"	1 71

323

Block	120.	"	"	1 55
"	122.	"	"	1 79
"	126.	"	"	3 28
"	138.	"	"	3 64
"	220.	"	"	4 69
"	221.	"	"	4 25
E. ½	222.	"	D. De Shields, except lot 7.	3 17
"	225.	"	D. De Shields.	8 13
"	226.	"	D. De Shields, except lot 5.	7 10
"	227.	"	D. De Shields.	13 40

Witness my hand and official seal, this 22nd Dec., 1879.
(Signed) V. H. STOUGH, *Co. Aud.*

(Endorsed:) Palmer *vs.* Call *et al.* Certificate of am't due for taxes on town lots Algona. Filed Jan. 26, 1880. E. R. Mason, clerk.

324 And on the 26th day of January, 1880, an order made at chambers at Keokuk, Iowa, was filed in said cause, which said order of court is in the words and figures following, to wit:

325 In the United States Circuit Court, District of Iowa. At Chambers, Keokuk, Ia.

JANUARY 24TH, 1880.

HENRY H. PALMER, Complainant,
vs.
ASA C. CALL *et al.*, Defendant. } No. 969. Eq.

This cause came on to be heard this day upon the motion and application of the complainant to increase the amount of the supersedeas bond. And the court having examined the affidavits of the complainant and defendant, and having considered the fact not heretofore known to the court, that the taxes upon said lands are delinquent to a considerable amount, which the plaintiff, for his own protection, may be compelled to advance and pay, is of the opinion that said bond is insufficient. It is therefore ordered that said
326 motion be sustained, and that the supersedeas bond on this case be fixed at the sum of five ($5,000) thousand dollars, and that upon the execution of a bond in said sum of five thousand dollars, and the approval and acceptance of the same according to law, the execution of the decree in this cause be suspended. And it is further ordered that the defendant have thirty days from this date in which to file said bond of five thousand dollars. The clerk of this court will give the defendant notice of this order.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) Palmer *vs.* Call *et al.* Order of court on motion to increase supersedeas. Filed Jan. 26, 1880. E. R. Mason, clerk.

327 And on the 20th day of May, 1880, a special commissioner's report of sale of mortgaged premises was filed in said cause, which said report of sale is in the words and figures following, to wit:

328 *Report of Sale.*

In the United States Circuit Court, District of Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } No. 969. Eq. In Chancery.

To the honorable judges of said court in chancery sitting:

In pursuance of a decretal order of this honorable court made in the above cause, and dated November 28th, 1879, I, the undersigned, special commissioner of this court, do report:

That all and singular the mortgaged premises mentioned in the complainant's bill, and in the decree in *in* this cause, were sold by me at the front door of the United States court-house in the
329 city of Des Moines in said district on the 28th day of February, 1880.

That previous to such sale I gave four weeks' public notice of the time and place thereof by advertisement containing a brief

description of such premises, published in the Iowa State Register, a newspaper published in Des Moines, in the county of Polk, State of Iowa, and district aforesaid; I also posted copies of said notice at the front door of the United States court-house in Des Moines, and also served said defendant with notice thereof. A copy of said notice with affidavit of publication is hereto attached, marked "A," and made part of this report. Said sale was advertised by me to take place on the 24th day of January, A. D. 1880, and was adjourned by me until the 26th day of January, A. D. 1880, and from that time until the 28th day of February, 1880.

330 That at such sale the said premises were struck off as follows:

1st. The east half [of] southwest quarter section two (2), township ninety-seven (97), range thirty-one (31), to complainant for the sum of $200.00.

2d. North half of northwest quarter section four, township ninety-seven, range thirty-one, to complainant for the sum of $155.00.

3d. The southeast quarter of northwest quarter, and northeast quarter of southeast, and west half of southwest section six (6), township ninety-seven (97), range thirty-one (31), to complainant for the sum of $375.00.

4th. North half of northwest quarter, and northeast quarter of southeast quarter, and southwest quarter of southeast quarter, and northeast quarter of southwest quarter of section eight (8),

331 township ninety-seven (97), range thirty-one (31), to complainant for the sum of $500.00.

5th. Southeast quarter of southeast quarter, and 29 acres off east side of southwest quarter of southeast quarter section twelve (12), township ninety-seven (97), range thirty-one (31), to complainant for the sum of $175.00.

6th. South half of northwest quarter of section fourteen (14), township [ninety]-seven (97), range thirty-one (31), to complainant for the sum of $200.00.

7th. North half of northeast quarter, and southwest quarter of northeast quarter, and west half of northwest quarter, and north half of southeast quarter, and northeast quarter of southwest quarter of section eighteen, township ninety-seven (97), range thirty-one (31), to complainant for the sum of $770.00.

332 8th. South half of southeast quarter and southeast quarter of southwest quarter of section twelve (12), township ninety-seven (97), range thirty-two (32), west 5 P. M., all in Palo Alto county, State of Iowa, to complainant for the sum of 300.00.

9th. Southwest quarter section four (4), township ninety-five (95), range twenty-nine (29), to complainant for the sum of $2,000.

10th. 108 acres off the southwest quarter of section ten (10), township ninety-five (95), range twenty-nine (29), described as follows, to wit: West $\frac{3}{4}$ of the north half of said southwest quarter, 26 quarters off the west side of the southwest quarter of said southwest quarter; northeast quarter of southeast quarter of said south-

west quarter; 8 acres off the north side of the northeast quar-
333 ter of the northeast quarter of said southwest quarter, and 4 acres off the east side of the southwest quarter of the said southwest quarter, to complainant for the sum of $1,800.00.

11th. South half of north half of section twenty (20), township ninety-five (95), range twenty-nine (29), to complainant for the sum of $1,000.00.

12th. Northeast quarter of section thirty-three (33), township ninety-five (95), range twenty-nine (29), to complainant for the sum of six hundred dollars.

13th. Northeast quarter of section five (5), township ninety-five (95), range thirty (30), to complainant for the sum of $2,200.00.

14th. Northwest quarter of section twenty-two (22), township ninety-four (94), range twenty-eight (28), to complainant
334 for the sum of $740.

15th. 64 acres in the west fr'l half of northwest quarter of section six, township ninety-five (95), range twenty-eight (28), being that part lying and being north of the McG. & M. R. railway, to the complainant for the sum of $1,600.

16th. Southwest quarter of section seven (7), township ninety-five (95), range twenty-nine (29), to complainant for the sum of $1,300.00.

17th.	Block No.	six	to complainant for the sum of		$5.00.
18th.	"	ten	"	"	15.00.
19th.	"	twelve	"	"	5.00.
20th.	"	fourteen	"	"	15.00.
21st.	"	sixteen	"	"	10.00.
22nd.	"	eighteen	"	"	10.00.
23rd.	"	twenty	"	"	25.00.
24th.	"	twenty-two	"	"	20.00.
25th.	"	twenty-four	"	"	25.00.
26th.	"	twenty-eight	"	"	15.00.

27th. Block No. thirty to complainant for the sum of 15.00.

335 28th. Block No. thirty-four to complainant for the sum of $20.00.

29th.	Block No.	thirty-six	to complainant for the sum of		$5.00.
30th.	"	forty-two	"	"	25.00.
31st.	"	forty-four	"	"	20.00.
32d.	"	forty-six	"	"	5.00.
33d.	"	forty-eight	"	"	5.00.
34th.	"	fifty	"	"	10.00.
35th.	"	fifty-two	"	"	15.00.
36th.	"	fifty-four	"	"	35.00.
37th.	"	fifty-six	"	"	50.00.
38th.	"	sixty	"	"	25.00.
39th.	"	sixty-two	"	"	15.00.
40th.	"	sixty-four	"	"	15.00.
41st.	"	sixty-six	"	"	5.00.
42d.	"	seventy-four	"	"	25.00.
43d.	"	seventy-six	"	"	35.00.
44th.	"	seventy-eight	"	"	20.00

45th. Block No. eighty to complainant for the sum of $5.00.
46th. " eighty-two " " 10.00.
47th. " eighty-six " " 5.00.
48th. " eighty-eight " " 50.00.
49th. " ninety-four " " 25.00.
50th. " ninety-six " " 50.00.
51st. " one hundred & eight " " 20.00.
52d. " one hundred & ten " " 10.00.
53d. " one hundred & twelve " " 5.00.
54th. " one hundred — twenty " " 100.00.

55th. Block No. one hundred — twenty-two to complainant for the sum of $20.00.

336 56th. Block No. one hundred — twenty-six to complainant for the sum of $75.00.

57th. Block No. one hundred — thirty-eight to complainant for the sum of $30.00.

58th. Block No. two hundred & twenty to complainant for the sum of $75.00.

59th. Block No. two hundred & twenty-one to complainant for the sum of $275.00.

60th. East half of two hundred — twenty-two to complainant for the sum of $125.

61st. Bl'k No. two hundred — twenty-five to complainant for the sum of $150.00.

62d. Bl'k No. two hundred — twenty-six to complainant for the sum of $100.00.

63d. Bl'k No. two hundred — twenty-seven to complainant for the sum of $300.00.

The said sums so bid being the highest and best bids received for each separate parcel.

That previous to offering said premises for sale, the defendant filed with me a plat of the same, which I return herewith and mark the same Exhibit "B," and make it part hereof.

He also filed with me a request to offer the said premises for sale in a certain order, which said request I return herewith, and make the same Exhibit "C," and make it a part hereof.

That said premises were offered by me in accordance with said request and plat, and sold to the complainant as aforesaid,
337 except blocks No. 104 and 106, which were offered for sale, but no bids were received for the same, and were not sold by me. I have received in payment of said bid the complainant's receipt for the sum of fifteen thousand eight hundred and thirty-five dollars, the same being the full amount of said several bids. I return same herewith and make it Exhibit "D," and make it a part hereof.

Said sum of $15,835.00 should be credited on said decree, after adding to the same the costs and expenses of this sale, amounting to $95.75, which would leave a balance due thereon on this 28th day of February, A. D. 1880, of $17.77.

The decree, interest, and costs are as follows:

Decree		$15,484 46
Interest		434 40
Attorneys' fee		500 00
Interest		8 41
	Clerk's fees	48 53
338	A. V. Schneck, commissioner	11 90
	R. C. Richards	9 00
State court		39 30
Printing abstract		21 00
Master, on sale, including expenses		95 75
		$16,652 77

And further, that I have executed to said Henry H. Palmer a certificate of sale of the premises so sold by me, and which premises as described in the said bill of complaint and decretal order and in the said certificate executed by me, and particularly described hereinbefore, all of which is respectfully submitted February 28th, 1880.

(Signed) EDWARD R. MASON,
Special Com. of said Court.

(Here follows plat, marked p. 339.)

340 EXHIBIT "C."—*E. R. Mason, Special Com.*

SWAN LAKE, IA., *Feb.* 11, 1880.

E. R. Mason, *Special Com.*

SIR: Please offer the real estate covered by mortgage given by Asa C. Call to H. H. Palmer (upon which a decree has been rendered in the U. S. circuit court) in the following order, to wit:

1st.

East half southwest quarter sec. 2, Tp. 97, R. 31.

2nd.

North half of northwest quarter sec. 4, Tp. 97, R. 31.

3rd.

Southeast quarter of northwest quarter, and northeast quarter of southeast and west half of southwest sec. 6, Tp. 97, R. 31.

4th.

North half of northwest quarter, and northeast quarter of southeast quarter, and southwest quarter of southeast quarter, and northeast quarter of southwest quarter of sec. 8, Tp. 97, R. 31.

341 5th.

Southeast quarter of southeast quarter and 29 acres off east side of southwest quarter of southeast quarter, sec. 12, Tp. 97, R. 31.

6th.

South half of northwest quarter, sec. 14, Tp. 97, R. 31.

7th.

North half of northeast quarter, and southwest quarter of northeast quarter and west half of northwest quarter and north half of southeast quarter and northeast quarter of southwest quarter, sec. 18, Tp. 97, R. 31.

8th.

South half of southeast quarter and southeast quarter of southwest quarter of sec. 12, Tp. 97, range 32 west, 5th P. M. All in Palo Alto county, State of Iowa.

9th.

Southwest quarter sec. 4, Tp. 95, R. 29.

10th.

108 acres off the southwest quarter of sec. 10, Tp. 95, R. 29,
342 described as follows, to wit: West ¾ of the north half of said southwest quarter, 26 acres off the west side of the southwest quarter of said southwest quarter, northeast quarter of southeast quarter of said southwest quarter, 8 acres off the north side of the northeast quarter of the northeast quarter of said southwest quarter, and 4 acres off the east side of southwest quarter of the said southwest quarter.

11th.

South half of north half, Sec. 20, Tp. 95, R. 29.

12th.

Northeast quarter of Sec. 83, Tp. 65, R. 29.

13th.

Northeast quarter of Sec. 5, Tp. 95, R. 30.

14th.

Northwest quarter Sec. 22, Tp. 94, R. 28.

15th.

64 acres in the west frl. half of northwest quarter of Sec. 6, Tp. 95, R. 28, being that part lying and being north of the McG. & Mo. R. Ry.

343 16th.

Southwest quarter of Sec. 7, Tp. 95, R. 29.

17th to 65th, inclusive.

Please sell the following blocks in Call's addition to Algona, each separately, in the following order, to wit: Blocks No. 6, 10, 12, 14, 16, 18, 20, 23, 24, 28, 30, 34, 36, 42, 44, 46, 48, 50, 52, 54, 56, 60, 62, 64, 66, 74, 76, 78, 80, 82, 86, 88, 94, 96, 104, 106, 108, 110, 112, 120, 122, 126, 138, 220, 221, east half of 222, all 225, 226, 227.

Respectfully yours,

ASA C. CALL,
By J. HARRY CALL,
Agent.

344 United States Circuit Court, District of Iowa.

HENRY H. PALMER } No. 969. Eq.
vs.
ASA C. CALL.

$15,835.00.

Received of E. R. Mason, special commissioner in above cause, the sum of fifteen thousand eight hundred thirty-five dollars, amount of complainant's bid at sale of the mortgaged premises in above cause, on the 28th day of Feb'y, A. D. 1880.

(Signed) HENRY H. PALMER,
(Signed) By O'CONNELL & SPRINGER,
His Solicitors.

EXHIBIT "D."—E. R. Mason, Special Com.

(Endorsed:) United States Circuit Court, district of Iowa. Henry H. Palmer *vs.* Asa C. Call. Master's report of sale of mortgaged premises. Filed May 20th, 1880. E. R. Mason, c'k.

345 And on the 21st day of May, 1880, in the record of the proceedings in said court is an entry of judgment for balance due upon decree after sale of mortgaged premises, in the words and figures following, to wit:

346 United States Circuit Court, District of Iowa. May Term, 1880.

FRIDAY, *May 21st*, 1880.

HENRY H. PALMER } No. 969. Eq.
vs.
ASA C. CALL *et al.*

This cause come on this day for hearing, and it appearing to the court from the report of the special commissioner herein that after the sale of the mortgaged premises on the 28th day of February, 1880, there remains unpaid on said decree the sum of eight hundred seventeen & $\frac{77}{100}$ dollars. Thereupon, upon motion of O'Connell and Springer, complainants' solicitors, it is now ordered that the complainant have judgment against the defendant, Asa C. Call, for said sum of $17.77, with ten per cent. interest from the 28th day of February, 1880, and that general execution issue therefor.

347 And on the 1st day of June, 1881, the defendant, Asa C. Call, by his solicitors, filed in said cause a motion to recall general execution issued, which said motion is in words and figures following to wit:

348 United States Circuit Court, District of Iowa, Central Division.

H. H. PALMER *vs.* ASA C. CALL.

Comes now the defendant, Asa C. Call, and moves the court for an order recalling the general execution issued herein, and for cause

of his motion says that all of the mortgaged premises have not yet been sold.

(Signed) BARCROFT, GATCH & McCAUGHAN,
Sol's for Call.

(Endorsed:) U. S. circuit court. H. H. Palmer *vs.* Asa C. Call. Mo. to recall general execution. Filed Jun- 1, 1881. E. R. Mason, clerk.

349 And on the 1st day of June, 1881, in the record of the proceedings in said court is an entry in said cause, in the words and figures following, to wit:

350 United States Circuit court, District of Iowa. May Term, 1881.

WEDNESDAY, *June* 1, 1881.

HENRY H. PALMER
vs.
ASA C. CALL *et al.* } No. 969. Eq.

This cause came on this day for hearing on the defendants' motion to set aside the order for an execution herein, made on the 21st day of May, 1880, the defendants appearing by Barcroft, Gatch & McCaughn, their solicitors; and, the court being now advised in the premises, it is ordered that no execution issue herein until the further order of the court.

351 And on the 28th day of October, 1881, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

352 United States Circuit Court, District of Iowa. October Term.

FRIDAY, *October 28th*, 1881.

HENRY H. PALMER
vs.
ASA C. CALL. } No. 969. Eq.

This cause came on this day for hearing, and it was ordered that the amount of the appeal bond herein be fixed at the sum of five hundred dollars, with sureties to be approved by one of the judges of this court.

353 And on the 7th day of November, 1881, an appeal bond was filed in said cause, which appeal bond is in the words and figures following, to wit:

354 *Appeal Bond.*

In the Circuit Court of the United States for the District of Iowa, Central Division.

HENRY H. PALMER *vs.* ASA C. CALL *et al.*

Know all men by these presents, that Asa C. Call, principal, and

—— —— sureties, are held and firmly bound unto Henry H. Palmer, complainant, in the sum of five hundred (500) dollars; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 31st day of October, A. D. 1881.

Whereas, lately, at a term of the circuit of the United States for the district of Iowa, in a suit depending in said court between
355 Henry H. Palmer, complainant, and Asa C. Call and others, defendants, a decree was rendered and entered against the said Asa C. Call, and said Call having appealed from said decree of said circuit court to the Supreme Court of the United States, at the next term thereof, to be holden on the second Monday of October, 1882; and said appeal having been allowed by said circuit court in open court, and said Call having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse said decree in the aforesaid suit:

Now, therefore, the conditions of this obligation is such that if the above-named Asa C. Call shall prosecute his appeal to effect, and answer all costs if he shall fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

356 (Signed) ASA C. CALL. [L. S.]
(Signed) JO. HARRY CALL. [L. S.]
(Signed) GEO. C. CALL. [L. S.]
(Signed) A. F. CALL. [L. S.]

UNITED STATES OF AMERICA:

For the District of Iowa, Central Division.

Jo. Harry Call and A. F. Call, being first duly sworn, depose and say, and each for himself says: That he is a resident property holder of Kossuth county, State of Iowa, and that he is the owner of property not exempt from execution to the amount of more than five hundred (500) dollars.

(Signed) JO. HARRY CALL.
(Signed) A. F. CALL.

Subscribed and sworn to before me by said Jo. Harry Call and A. F. Call, this 31st day of October, 1881.

[SEAL.] (Signed) V. H. STOUGH,
Notary Public in and for Kossuth Co., State of Iowa.

357 STATE OF IOWA, *Kossuth County:*

I, N. B. Benham, clerk dist. court of Kossuth county, Iowa, certify that I am acquainted with the above-named sureties, and if said

bond was for my approval would have no hesitation in approving the same.

Algona, Iowa, Oct. 31st, 1881.

[SEAL.] (Signed) N. B. BENHAM,
Clerk Dist. Court of Kossuth County, Iowa.

Approved.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) Palmer *vs.* Call. Appeal bond. Filed Nov. 7, 1881. E. R. Mason, clerk.

358 And the complainant, to sustain the issues in his behalf, introduced the following evidence upon the hearing in said cause, to wit:

359 EXHIBIT "A."

$11,000.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, A. D. 1880, for value received, I promise to pay to the order of Henry H. Palmer the principal sum of eleven thousand dollars, with interest thereon at the rate of ten per cent. per annum from November 1st, 1875, until maturity, payable semi-annually, according to the tenor of ten interest notes, each for five hundred and fifty dollars, bearing even date herewith, both principal and interest notes payable at the banking house of Gilman, Son & Co., New York; and if default be made in the payment of any interest note or any portion thereof for the space of ten days after the same becomes due and payable, then said principal and interest notes shall, at the option of the said Henry H.
360 Palmer, or his assigns, become at once due and payable without further notice. It is expressly agreed and declared that these notes are made and executed under and are in all respects to be construed by the laws of the State of Iowa, and are secured by mortgage of even date herewith, duly stamped and recorded.

This note bears interest at ten per cent. after maturity.

(Signed) ASA C. CALL.

[Endorsed on the side:] Burnham, Ormsby & Co.

(Endorsed:) Henry H. Palmer *vs.* Asa C. Call. Exhibit A, for complainant. In the circuit court of the United States, district of Iowa. January 14th, 1879. Abr'm V. Schenck, U. S. commissioner, dist. of N. Jersey.

361 *Interest Note.*

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1876, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 1.

[Endorsed across face:] Paid May 18, '77.

(Endorsed:) Pay to the order of Gilman, Son & Co. Henry H. Palmer. Paid in full May 18, '76.

Interest Note.

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1876, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York,
362 being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 2.
(S'g'd) ASA C. CALL.

(Endorsed:) Henry H. Palmer. Pay to the order of Gilman, Son & Co. Burnham, Ormsby & Co.

Interest Note.

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1877, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 3.
(Signed) ASA C. CALL.

363 *Interest Note.*

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1877, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 4.
(S'g'd) ASA C. CALL.

Interest Note.

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1878, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 5.
(Signed) ASA C. CALL.

364 *Interest Note.*

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1878, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 6.

(Signed) ASA C. CALL.

Interest Note.

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1879, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 7.

(S'g'd) ASA C. CALL.

365 *Interest Note.*

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1879, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 8.

(Signed) ASA C. CALL.

Interest Note.

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of May, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 9.

(S'g'd) ASA C. CALL.

366 *Interest Note.*

$550.00. EMMETSBURG, IOWA, *November 1st*, 1875.

On the first day of November, 1880, for value received, I promise to pay to the order of Henry H. Palmer five hundred and fifty dollars, at the bank of Gilman, Son & Co., New York, being the interest due on my principal note of $11,000.00 of even date herewith. This note bears interest at ten per cent. after due.

No. 10.

(Signed) ASA C. CALL.

367 EXHIBIT B FOR COMPL'T, JANUARY 14, 1879.—ABR'M V. SCHENCK, *U. S. Commissioner, Dist. of N. Jersey.*

In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

[Revenue Stamp.]

Know all men by these presents, that Asa C. Call and his wife, Sarah Call, of Kossuth county and State of Iowa, in consideration of the sum of eleven thousand dollars, in hand paid by Henry H. Palmer, of Middlesex county and State of New Jersey, do hereby sell and convey unto the said Henry H. Palmer the following described premises, situated in the counties of Kossuth and Palo Alto and State of Iowa, to wit:

The northwest quarter of section twenty-two (22), township
368 ninety-four (94) north, range twenty-eight (28) west; also sixty-four (64) acres in the west fractional half of the northwest quarter of section six (6), township ninety-five (95) north, range twenty-eight (28) west, it being that part of said west fractional half of the northwest quarter situate and being north of the McGregor and Missouri railway; the southwest quarter of section four (4); the southwest quarter of section seven (7); one hundred and eight (108) acres off the southwest quarter of section ten (10), described as follows: The west three-fourths (¾) of the north half of said southwest quarter; twenty-six (26) acres off the west side of the southwest quarter of the southwest quarter; the northeast quarter of the southeast quarter of the southwest quarter; eight (8) acres off the north side of the northeast quarter of the northeast quarter of said southwest quarter, and four (4) acres off the east side of the south-
369 west quarter of said southwest quarter; the south half of the north half of section twenty (20), and the northeast quarter of section thirty-three (33), all in township ninety-five (95), range twenty-nine (29); the northeast quarter of section five (5), township ninety-five (95), range thirty (30) west; also blocks six (6), ten (10), twelve (12), fourteen (14), sixteen (16), eighteen (18), twenty (20), twenty-two (22), twenty-four (24), twenty-eight (28), thirty (30), thirty-four (34), thirty-six (36); forty-two (42), forty-four (44), forty-six (46), forty-eight (48), fifty (56), fifty-two (52), fifty-four (54), fifty-six (56), sixty (60), sixty-two (62), sixty-four (64), sixty-six (66), seventy-four (74), seventy-six (76), seventy-eight (78), eighty (80), eighty-two (82), eighty-six (86), eighty-eight (88), ninety-four (94), ninety-six (96), one hundred and four (104), one hundred and six (106), one hundred and eight (108), one hundred and ten (110), one hundred and twelve (112), one hundred and twenty (120), one hundred and
370 twenty-two (122), one hundred and twenty-six (126), one hundred and thirty-eight (138), two hundred and twenty (220), two hundred and twenty-one (221), the east half of two hundred and twenty-two (E. ½ of 222), two hundred and twenty-five (225), two hundred and twenty-six (226), and two hundred and twenty-seven (-27), in Call's Addition to Algona, the above-described lands situated in the county of Kossuth, Iowa; also the east half of the south-

west quarter of section two (2); the north half of the northwest fractional quarter of section four (4); the southeast quarter of the northwest quarter, the northeast quarter of the southeast quarter, and the west half of the southwest quarter of section six (6); the north half of the northwest quarter, the northeast quarter of the southeast quarter, the southwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section eight (8);
371 the southeast quarter of the southeast quarter, and twenty-nine (29) acres off the east side of the southwest quarter of the southeast quarter of section twelve (12), the south half of the northwest quarter of section fourteen (14), the north half of the northeast quarter, the southwest quarter of the northeast quarter, the west half of the northwest quarter, the north half of the southeast quarter, and the northeast quarter of the southwest quarter of section eighteen (18), all in township ninety-seven (97) north, range thirty-one (31); also the south half of the southeast quarter and the southeast quarter of the southwest quarter of section twelve (12), township ninety-seven (97) north, range thirty-two (32) west of the fifth (5th) P. M., in Palo Alto county, Iowa, and all containing two thousand three hundred and fifty (2,350) acres, more or less.
372 And we hereby covenant with the said Henry H. Palmer that we hold said premises by title in fee-simple; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever; and we do covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever, and the said parties each hereby relinquishes all right of dower and all contingent or property rights in and to the above-described premises, the intention being to convey hereby an absolute title in fee-simple, including all the rights of homestead; to have and to hold the premises above described, with all the appurtenances thereunto belonging, unto the said Henry H. Palmer, and to his heirs and
373 assigns forever: Provided always, and these presents are upon this express condition, That if the said Asa C. Call, or his heirs, executors, or administrators, shall pay or cause to be paid to the said Henry H. Palmer, or his executors, administrators, or assigns, the sum of—

Eleven thousand dollars on the first day of November, 1880;
Five hundred and fifty dollars on the first day of May, 1876;
Five hundred and fifty dollars on the first day of November, 1876;
Five hundred and fifty dollars on the first day of May, 1887;
Five hundred and fifty dollars on the first day of November, 1877;
Five hundred and fifty dollars on the first day of May, 1878;
Five hundred and fifty dollars on the first day of November, 1878;
374 Five hundred and fifty dollars on the first day of May, 1879;
Five hundred and fifty dollars on the first day of November, 1879;
Five hundred and fifty dollars on the first day of May, 1880;

Five hundred and fifty dollars on the first day of November, 1880;

—with interest thereon at the rate of ten per cent. per annum, according to the tenor and effect of the eleven promissory notes of the said Asa C. Call, payable to Henry H. Palmer, bearing even date herewith, then these presents to be void; otherwise to remain in full force.

And it is further agreed that, if default shall be made in the payment of any of said notes so secured, or any part thereof, as the same matures, for the space of ten days, or if the party of the
375 first part shall allow the taxes or any other public rates or assessments on the above-described property, or any part thereof, to become delinquent, or shall fail to insure said premises against fire in some responsible insurance company, designated by the mortgagee herein, for the sum of ——— dollars, or shall do any act whereby the value of said mortgaged property shall be impaired, then, upon the happening of any one of said contingencies, the whole amount herein secured shall be and become due, and the mortgagee, his heirs or assigns, may proceed at once to foreclose this mortgage and sell the mortgaged property, or so much thereof as may be necessary to satisfy said debt, interest, and costs, and all taxes, public rates, and assessments that may be due thereon, to-
376 gether with a reasonable attorney's fee for collecting the debt so secured, which shall be included in judgment in such foreclosure case.

And it is further expressly agreed and declared that this mortgage and the notes secured by the same are made and executed in accordance with the laws of the State of Iowa, and are to be in all respects construed thereby.

In witness whereof, we have hereunto set our hands and seals, this first day of November, A. D. 1875.

(Signed) ASA C. CALL. [L. S.]
(Signed) SARAH CALL. [L. S.]

STATE OF IOWA, }
Kossuth County, } *ss:*

On this 19th day of November, A. D. 1875, before me, George E. Clarke, a notary public in and for said county, personally came Asa C. Call & his wife, Sarah Call, personally to me known to
377 be the identical persons whose names are affixed to the above instrument as grantors, and acknowledge the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Algona, Iowa, on the day and date last above written.

[SEAL.] (Signed) GEORGE E. CLARKE,
Notary Public.

(Endorsed:) Mortgage Asa C. Call *et ux.* to Henry H. Palmer. Filed for record the 25 day of Jan'y, A. D. 1876, at 9 o'clock a. m.,

and recorded in book D of mortgages, on page 39, of Kossuth county records land. A. M. Horton, recorder. Burnham, Ormsby & Co., bankers, loan and land brokers, Emmetsburg, Iowa. Also recorded in book "D" of town lots, page 345.

378 STATE OF IOWA, } *ss:*
Palo Alto County, }

Filed for record this — day of February, A. D. 1876, at 1 o'clock p. m., and recorded in book "A" of mortgages, page 456.
(Signed) J. L. MARTIN, *Recorder.*

379 Circuit Court of the United States, District of Iowa, *ss:*

To A. V. Schenck, United States Commissioner, Greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine Henry H. Palmer on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein Henry H. Palmer is plaintiff and Asa C. Call *et al.* are defendants, on the part of the plaintiffs, upon the interrogatories annexed to this commission; and, therefore, you are hereby commanded that at certain days and places to be appointed by you for that purpose you do cause the said Henry H. Palmer to come before you, and then and there examine him on oath upon the said interrogatories.

380 That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by him, and duly sworn to before you. That you take said deposition, in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place herein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa. That you endorse on the

381 outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31 day of Dec., 1878, and in the 103d year of the Independence of the United States of America.

Attest:

[SEAL.] (Signed) EDWARD R. MASON,
Clerk of United States Circuit Court, District of Iowa.

382 *Instructions for Taking Depositions.*

The officer taking the deposition will observe the following forms and mode of proceeding, commencing thus:

Depositions of witnesses produced, sworn, and examined at ———, in the county of ——— and State of ———, before me (name of officer and style of office), in a certain cause now pending in the ——— court of ——— county, State of Iowa, between ——— ———, plaintiff, and ——— ———, defendant, on the part of the ———. N. O., of lawful age, being produced, sworn, and examined on the part of the ———, deposeth and saith (here insert each interrogatory as it occurs and the answer thereto immediately following).

NOTE.—Every deposition must be reduced to writing by
383 some person who is neither of the parties, attorney of neither, nor in anywise interested in the event of the suit, in the presence of the officer before whom it is taken, and signed by the witness.

If any paper or exhibit is produced and proved or referred to by a witness it ought to be described in his depositions, and marked and referred to by the deponent in such a manner that it may be identified when the deposition is read, and all such papers and exhibits must be attached to and returned with, the deposition.

The officer will annex at the foot of the deposition of each witness the following certificate:

"I (insert name of officer and style of office), do hereby certify that N. O., the deponent, whose place of residence is (here in-
384 sert it), was by me sworn (or affirmed) to testify the whole truth of his (or her) knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his (or her) examination reduced to writing by (here name the person), who is neither of the parties, attorney of neither, nor in anywise interested in the event of the suit, and after being by me carefully read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the (here insert the date), between the hours of — a. m. and — p. m. of said day, at (here insert the place, county, and State).

Given and certified (here give the date) under my hand and seal official, this — day of ——, 187–. (If the officer has a seal it must be affixed.)

——— ———."

Then proceed with other depositions (if any) in the same
385 form, annexing a like certificate to each.

When all the witnesses who appear have been sworn and examined, and their depositions reduced to writing, subscribed, and certified to as above, the officer will attach to the depositions all papers and exhibits, proved or referred to in the examination, the commission and notice (herewith inclosed), with the following certificate, endorsed thereon or attached thereto:

THE STATE OF ——, } ss:
County of ——, }

I (name the officer and style of office), within and for (name the place), or duly — commissioner for that purpose, do certify that, in pursuance of the within (or annexed) commission and notice, came before me, at (the place where the testimony was taken), N.
386 O., P. Q., &c. (insert the names of the witnesses), who were by me sworn and examined, and such examination reduced to writing by (name the person), who is neither one of the parties, their attorney, nor in anywise interested in the event of the suit, and after being by me read over to each of said defendants the same was sworn to and subscribed by said witnesses, respectively, in my presence, and their said depositions are now herewith returned.

Given under my hand and seal, official, hereto affixed at (name of place, county, and State), this (give the date).

—— ——.

The return must be accompanied by a certificate of the official character of the officer when the depositions are taken by any judge, notary public, or justice of the peace, attested to by the seal of the State of —— or by the seal of any court of record, of the
387 county and city wherein such depositions shall be taken, which may be in the following form:

"It is hereby certified that —— —— on (here insert the date at which the depositions are taken and certified) was (and now is) —— (state the style of office), State of ——, duly commissioned and acting as such, and that full faith and credit are due to his acts as such.

In testimony whereof I, A. B., (here state the style of office), have hereunto subscribed my name and affixed the seal of said court at office this — day of ——, eighteen hundred and —.

[L. S.] A. B."

The officer taking the depositions is required to enclose in a strong envelope, securely sealed, the depositions, papers, and exhibits,
388 commission, notice, and certificates, and direct the same to the clerk of the —— court of —— county, Iowa, noting on some convenient part of the envelope the style of the cause and contents, thus:

——— }
vs. } Deposition on part of ——.
——— }

If the packet is to be transmitted by mail it will be necessary to enclose it (directed and endorsed as above) in another envelope, directed to ——, in order to insure its being taken out of the post office.

The depositions must be begun on the day mentioned in the notice. If they cannot be completed on that day the taking of them may be adjourned to the succeeding day at the same place and be-

tween the same hours. The person taken them should in such case make the following entry, closing the business for that day.

389 "Not being able to complete the taking of said depositions by reason that (here insert the reason), I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

P. Q."

On the succeeding day let the person taking the depositions commence as follows:

Pursuant to the adjournment, as above stated, on — day of ——, in the year eighteen hundred and —, between the hours of — in the forenoon and — in the afternoon, at the ——, I continued the taking of said depositions, as follows:

390 N. O., in continuance of his deposition commenced yesterday, on his oath further says, etc.

The foregoing directions must be strictly observed, or the depositions will be unavailing.

If the officer taking deposition has a seal of office it must be affixed to every certificate.

The officer taking the deposition must write out each interrogatory in full and insert the answer just below the proper question.

391 THE STATE OF NEW JERSEY, } ss:
County of Middlesex, }

I, Abraham V. Schenck, United States commissioner for the district of New Jersey, do certify that in pursuance of the annexed commission and notice came before me, at the city of New Brunswick, in the aforesaid county and State, Henry H. Palmer, who was by me sworn and examined, and such examination reduced to writing by me, who is neither one of the parties, their attorney, nor in anywise interested in the event of the suit, and after being by me read over to the said witness, the same was sworn to and subscribed by the said witness in my presence, and that the said deposition is now herewith returned.

Given under my hand and seal official, hereto affixed at the city of New Brunswick, in the county and State aforesaid, this fourteenth day of January, A. D. 1879.

[SEAL.] (Signed) AB'M V. SCHENCK,
United States Commissioner for the Dist. of N. Jersey.

392 In the Circuit Court United States, Dist. of Iowa.

HENRY H. PALMER }
vs. } No. 969.
ASA C. CALL. }

The above-named complainant prays the appointment of some suitable person as commissioner to take the deposition of the complainant, Henry H. Palmer, residing at the city of New Brunswick,

in the State of New Jersey, and to that end that a commission issue according to law.

(Signed) J. D. SPRINGER,
Sol. for Compl't.

393 In the Circuit Court United States, Dist. of Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } No. 969. Ch'y.

To the above named defendant, Asa C. Call, and Wright, Gatch and Wright, his solicitors:

You are hereby notified that on the 31st day of December, 1878, an application will be made to Ed. R. Mason, clerk of the circuit court of the United States for the district of Iowa, for the appointment of a commissioner to take the deposition of Henry H. Palmer, who resides at New Brunswick, New Jersey, upon the interrogatories hereto annexed, and such cross-interrogatories as you may file. When taken and returned such deposition will be read in
394 evidence on part of the complainant upon the hearing of the above-entitled suit.

(Signed) J. D. SPRINGER,
Sol. for Compl't.

Receipt of a copy of this notice & the interrogatories annexed admitted this 18 day of December, 1878; and it is agreed that the instrument referred to in the third direct interrogatory may be identified by the witness and marked by the commissioner and returned with the depositions, and need not now be annexed to said interrogatories.

Des Moines, Iowa, Dec. 18th, 1878.

(Signed) WRIGHT, GATCH & WRIGHT,
Sol's for Def'ts.

395 In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } No. 969. C'h'y.

Interrogatories to be propounded to Henry H. Palmer, of the city of New Brunswick, in the State of New Jersey, a witness to be produced, sworn, and examined under and by virtue of the annexed commission before —— —— therein named, in a certain cause depending in the circuit court of the United States for the district of Iowa, wherein the said Henry H. Palmer is complainant and Asa C. Call is defendant, on the part of said complainant:

First Interrogatory. What is your name, age, and, occupation, and where do you reside?

396 Second Int. Do you know the parties, complainant and defendant in the title of these interrogatories named, or

either, or which of them; and how long have you known them, or either, and which of them?

Third Int. Look upon the notes and mortgage attached to these interrogatories, and marked ——, and state if you are the same Henry H. Palmer named in said instruments?

Fourth Int. If you state, in answer to the third foregoing interrogatory, that you are the person named in the instruments mentioned in said interrogatories, then state fully and particularly the consideration you paid for said notes and mortgage, and how, when, where, and to whom you paid the same.

397 Fifth Int. If, in answer to the foregoing interrogatories or any of them, you state that the consideration for the notes and mortgage mentioned in the third foregoing interrogatory, were some notes and a mortgage held by you against the defendant Call, then please state as fully as you now can the date of such notes and mortgage, to whom executed, w-ere you received the same, and from whom; what was the amount of the principal note; what coupon notes, if any, were attached to the principal note when you received the same, what was the arrangement under which you received the same; and if you purchased the same, what did you pay therefore; how did you pay it, in what, to whom, and when, and how much?

398 Sixth Int. If you have stated in answer to any of the foregoing interrogatories, that the consideration of the notes and mortgage mentioned in the third for-going interrogatory was wholly or partly other notes and mortgage held by you against Call, and surrender- to him, then what, if any, part of the principal note was paid prior to such surrender, and what coupon interest notes were then unpaid at the time of such surrender? State also, how many coupon interest notes were originally attached to the principal note, the amount and date of maturity of each, and the date of payment of each.

Seventh Int. If, in answer to any of the foregoing interrogatories, you have stated that you purchased certain notes and mortgages from A. C. Burnham, state if when the notes were received

399 by you they were indorsed; if so, by whom, and set out a copy of the endorsement or endorsements in answer to this interrogatory, if you can do so, and if there was a written assignment of the mortgage to you, attach the same, if in your possession or control, to your answer to this interrogatory, and if not in your possession or control, state what has become of the same, and attach a copy thereof to your answer to this interrogatory, if you can do so.

Eighth Int. In your transactions before referred to with the defendant, A. C. Call, who did the business, and what, if any part thereof, did you conduct personally with him, when did you personally make his acquaintance, and when and where have you seen him?

400 Ninth Int. When you purchased the notes and mortgage before referred to from A. C. Burnham what knowledge or information had you that the said Burnham or Burnham, Ormsby & Co., or any person or persons had been paid a commission or com-

pensation by said defendant Call, for procuring a loan for him of ten thousand dollars represented by said notes and mortgage?

Tenth Int. State fully and particularly all the knowledge and information you had on the subject of the consideration of the notes and mortgage above referred to and purchased from said A. C. Burnham by you, and of any and all transactions connected therewith up to the month of November, 1876, and when you first acquired any knowledge or information that said defendant Call had
401 not received the full amount of ten thousand dollars for which he gave said notes received by you from said Burnham, as above referred to.

Eleventh Int. Had you any suspicion when you purchased said notes and mortgage from the said Burnham that said Call had not received the full amount for which said notes were given.

Twelfth Int. State if said notes purchased by you from Burnham, as above referred to, were or were not payable to the order of the said Burnham.

Thirteenth Int. When you received the notes and mortgage referred to in the third foregoing interrogatory, what, if any, knowledge or information had you that the defendant Call did
402 not receive the whole or any part of the five hundred dollars which you sent to be paid to him as a part of the consideration for said notes and mortgage referred to in the said third interrogatory?

Fourteenth Int. At the time you received the notes referred to in the third interrogatory aforesaid what knowledge or information had you that Burnham, Ormsby and Company, or any one else, was to or had received the said five hundred dollars or any part thereof, for any negotiation or service in anywise connected with the notes and mortgage referred to in said third interrogatory?

Fifteenth Int. Have you ever received, directly or indirectly, or charged or agreed to receive directly or indirectly in money,
403 property, or anything of value more than ten cents on the hundred by the year, for the use of the sum of money expressed in the notes described in said third interrogatory?

Sixteenth Int. What arrangement or agreement or understanding existed other than that expressed in the notes and mortgages referred to in the for-going interrogatories, respecting the interest or compensation for the use of the sums of money expressed in said notes, or either of them? Answer fully.

Seventeenth Int. State fully and particularly the amount and date of each payment of interest on each of said notes.

Eighteenth Int. How long have you continuously resided
404 at the city of New Brunswick, and what has been your business during your residence in the city of New Brunswick?

Nineteenth Int. Do you know any other matter or thing touching the matter in question that may tend to the benefit or advantage of the said complainant; if so, declare the same fully and at large as if you had been particularly interrogated thereto.

(Signed) J. D. SPRINGER,
Solicitor for Complainant.

(Endorsed:) Filed Dec. 18, 1878. E. R. Mason, clerk.

405 In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER
vs.
ASA C. CALL. } Chancery. No. 969.

Exceptions to interrogatories exhibited by complainant to be propounded to himself as a witness on his own behalf in the above-entitled suit.

The above-named defendant, Asa C. Call, takes and files the following objections and exceptions to the interrogatories exhibited by the above-named complainant, to be propounded to himself as a witness on his own behalf, in pursuance of a commission to be issued herein, and to the issuance of said commission, upon the following grounds:

I.

406 To all of said interrogatories, and the issuance of a commission to take complainant's testimony thereon, because the notice of suing out such proposed commission does not specify the name, address, residence, nor official designation of the proposed commissioner.

II.

To the 5th, 6th, & 7th of said interrogatories, and the answers thereto, so far as they call for or give the contents of written instruments, because incompetent and not the best evidence, and because no basis is or has been laid for secondary evidence touching the contents of said written instruments.

III.

To the 9th & 10th of said interrogatories and the answers thereto, because under the statute of Iowa it is immaterial whether
407 or not the complainant knew of the usury in the notes and mortgage, referred to in said interrogatories, when he purchased or while he held the same.

IV.

To the 11th of said interrogatories for the same reasons as to the 9th & 10th, and for the further reason that it is leading.

V.

To the 12th of said interrogatories for the same reasons as to the 5th, 6th, & 7th, and for the further reason that it is leading.

VI.

To the 13th and 14th & 16th of said interrogatories, because immaterial and incompetent. Whether there was usury does not depend upon the personal knowledge or information of the complainant.

408 VII.

To the 15th of said interrogatories for the same reasons as to the 13th and 14th, and because the same is leading.

(Signed) WRIGHT, GATCH & WRIGHT,
HUBBARD, CLARK & DEACON,
Att'ys for Def't.

(Endorsed:) Filed Dec. 31st, 1878. E. R. Mason, clerk.

409 *Cross-Interrogatories Filed by the Clerk.*

1. Are you directly or indirectly interested in this action? And if interested, explain the interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge? And if not, do your answers show what are made from your personal knowledge and what from information, and the source of that information? If not, now show what is from information, and give its source.

3. State everything you know concerning the subject of this action favorable to either party.

(Endorsed:) Filed Dec. 31st, 1878. E. R. Mason, clerk.

410 Depositions of witnesses produced, sworn, and examined at the city of New Brunswick, in the county of Middlesex and State of New Jersey, before me, Abraham V. Schenck, United States commissioner for the district of New Jersey, in a certain cause now pending in the circuit court of the United States for the district of Iowa between Henry H. Palmer, plaintiff, and Asa C. Call, defendant, on the part of the plaintiff.

HENRY H. PALMER, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

To the first interrogatory—1. What is your name, age, and occupation, and where do you reside?—he saith:

My name is Henry H. Palmer; my age is sixty-three years; my occupation is president of the New Brunswick Fire Insurance Company; I am also a director of the New Brunswick Savings
411 Institution, and my residence is the city of New Brunswick, in the State of New Jersey, where I have resided for many years.

To the second interrogatory—2. Do you know the parties complainant and defendant in the title of these interrogatories named, or either or which of them, and how long have you known them, or either and which of them?—he says:

I am the party complainant named in the title of these interrogatories; I do not know the defendant therein named; have never seen him to my knowledge.

To the third interrogatory—3. Look upon the notes and mortgage attached to these interrogatories and marked, and state if you are the same Henry H. Palmer named in said instruments—he says:

I have here the principal note, signed by Asa C. Call, pay-
412 able to the order of Henry H. Palmer, dated November 1st,
1875, for the sum of eleven thousand dollars, marked Exhibit A in this cause, and the nine interest notes thereunto attached, each bearing the same date of November 1st, 1875, each for the sum of five hundred and fifty dollars, each payable to the order of Henry H. Palmer, and each signed by the said Asa C. Call, and I have here also the said mortgage executed by the said Asa C. Call and Sarah Call, his wife, to the said Henry H. Palmer, dated November 1st, A. D. 1875, for the sum of eleven thousand dollars, marked Exhibit B in this cause, and state that I am the same Henry H. Palmer named in the said instruments.

To the fourth interrogatory—4. If you state, in answer to the third foregoing interrogatory, that you are the person named
413 in the instruments mentioned in said interrogatories, then state fully and particularly the consideration you paid for said notes and mortgage, and how, when, where, and to whom you paid the same—he says:

I paid for the said notes and mortgage in the said preceding interrogatory mentioned full consideration as follows:

I gave therefor one note of the same Asa C. Call for the sum of ten thousand dollars then due & unpaid, and belonging to me, and the sum of one thousand dollars in cash, deposited by me at Gilman, Son & Co., bankers in the city of New York, in the State of New York, to the credit of Burnham, Ormsby & Co., of Emmetsburg, Iowa. I also sent the said original due note for ten thousand dollars and mortgage by mail to the said Burnham, Ormsby & Co., Emmetsburg, Iowa, through and by whom the said business
414 was transacted in their business as brokers. The said Burnham, Ormsby & Co. then kept their account at the said house of Gilman, Son & Co., & directed me to deposit the said moneys with the said house of Gilman, Son & Co. to their credit, as had long been my custom. The said note for ten thousand dollars and mortgage were sent by me by mail as aforesaid a short time before the said first day of November, A. D. 1875; and the thousand dollars was paid by me as aforesaid a short time thereafter, and as soon as the papers were perfected and delivered to me. Until recently I was under the impression, & I think have stated in testimony, that the sum of one thousand dollars which I have hereinabove stated was paid by me in cash, was paid five hundred dollars thereof in cash and five hundred dollars thereof in a coupon note accom-
415 panying the said note of ten thousand dollars of the said Asa C. Call, due November 1, 1875, but having recently examined the books of Gilman, Son & Co., & also their papers, and the receipt touching this transaction, I have ascertained the fact to be, and desire now to state, that I paid the whole sum of one thousand dollars in cash as hereinabove stated. The said coupon or interest note for five hundred dollars, due November 1st, 1875, I sent as usual to the said Burnham, Ormsby & Co., together with other interest notes due the same last-named date, to be collected for and remitted to me by them as my brokers, as had been my custom for a number of years.

The money for the said last-named interest notes I received October
29, 1875, from the said Burnham, Ormsby & Co., in the regu-
416 lar course of business, the said interest note of Asa C. Call,
due November 1st, 1875, having been paid among the rest.

To the fifth interrogatory—5. If, in answer to the foregoing interrogatories, or any of them, you state that the consideration for the notes and mortgage mentioned in the third foregoing interrogatory were some notes and a mortgage held by you against the defendant Call, then please state, as fully as you can, the date of such notes and mortgage, to whom executed, where you received the same, and from whom; what was the amount of the principal note; what coupon notes, if any, were attached to the principal note when you received the same; what was the arrangement under which you received
the same; and, if you purchased the same, what did you pay
417 therefor, how did you pay it, in what, to whom, and when and
how much?—he says:

The consideration for the notes and mortgage mentioned in the third foregoing interrogatory were the said note of the said Asa C. Call for the sum of ten thousand dollars as I have herein above stated, having five interest notes or coupons thereto attached when I purchased the same. The same was secured by a mortgage of the said Asa C. Call, all bearing date, to the best of my recollection, November 1st, 1872, and all executed, I think, but am not positive, to A. C. Burnham, trustee. I purchased the said note, interest notes thereto attached, and accompanying mortgage of the said A. C. Burnham, and paid him the sum of ten thousand dollars in cash therefor at the banking house of Gilman, Son & Co., in New York
city, on or about the 17th day of September, 1873. There
418 was no particular arrangement under which I received the
same other than that the said A. C. Burnham, by his endorsement, specially guaranteed the payment thereof to me. I made the purchase from him, and on the faith of his representation that the same was good, and on the faith of his said guaranty thereof. He then and there, by his special endorsement transfered all of the same to me, & for the said consideration which I then & there paid to him in cash as aforesaid.

To the sixth interrogatory—6. If you have stated, in answer to any of the foregoing interrogatories, that the consideration of the notes and mortgage mentioned in the third foregoing interrogatory was wholly or partly other notes and mortgage held by you against
Call, and surrender to him then what, if any, part of
419 the principal note was paid prior to such surrender, and what
coupon interest notes were then unpaid at the time of such surrender. State also how many coupon interest notes were originally attached to this principal note, the amount and date of maturity of each, and date of payment of each—he says:

No part of the principal note was paid prior to the surrender thereof by me to Burnham, Ormsby & Co., as agents of the defendant, Asa C. Call.

All the coupon interest notes originally attached to the said principal note and which coupon notes, five in all in number, and due

respectively on the first day of May and November of the respective years after the date of the principal notes, for five hundred dollars each had all been paid at the date of the said surrender
420 of the said principal note of ten thousand dollars.

To the seventh interrogatory—7. If in answer to any of the foregoing interrogatories you have stated that you purchased certain notes and mortgage from A. C. Burnham, state if when the notes were received by you they were endorsed; if so, by whom, and set out a copy of the endorsement or endorsements in answer to this interrogatory if you can do so. And if there was a written assignment of the mortgage to you attach the same, if in your possession or control, to your answer to this interrogatory; and if not in your possession or control, state what has become of the same and attach a copy thereof to your answer to this interrogatory if you can do so—he says:

I have no recollection of any written assignment of either
421 the said notes or mortgage, or any of them, other than the special assignment to me by the said A. C. Burnham, as trustee, endorsed by him on the said principal note and executed by him at the time of the purchase from him by me as aforesaid. I cannot now state the language of the said endorsement or assignment. I made the purchase upon the representation then made to me by the said Burnham that the said defendant, Asa C. Call, was perfectly good without the guarantee of him, the said Burnham, but that he, the said Burnham, would nevertheless guarantee the payment of the said original note, and did then and there endorse such guarantee on the said principal note, but I cannot now give the precise language thereof. When the said original note was
422 surrendered by me as aforesaid the endorsement thereon was, of course, surrendered with it and I have no knowledge where the same now are, they are not in my possession or under my control.

To the eighth interrogatory—8. In your transactions before referred to with the defendant, A. C. Call, who did the business, and what, if any, part thereof did you conduct personally with him? When did you personally make his acquaintance, and when and where have you seen him?—he says:

I have never known the defendant A. C. Call personally; have never seen him to my knowledge; and my transactions aforesaid were not with him personally, but with his agents, the said A. C. Burnham and Burnham, Ormsby & Co.

423 To the ninth interrogatory—9. When you purchased the notes and mortgage before referred to from A. C. Burnham, what knowledge or information had you that the said Burnham or Burnham, Ormsby & Co., or any other person or persons had been paid a commission or compensation by said defendant Call, for procuring a loan for him of ten thousand dollars represented by said notes and mortgage?—he says:

When I purchased the notes and mortgage before referred to I had not any knowledge, information, or notice whatsoever touching

the matters referred to in the said ninth interrogatory, or any of the said matters therein referred to.

To the tenth interrogatory—10. State fully and particu-
424 larly all the knowledge and information you had on the subject of the consideration of the notes and mortgage above referred to and purchased from A. C. Burnham by you, and of any and all transactions connected therewith up to the month of November, 1876, and when you first acquired any knowledge or information that said defendant Call had not received the full amount of ten thousand dollars, for which he gave said notes received by you from said Burnham as above referred to—he says:

I have herein above stated all my knowledge and information on the subject of the consideration of the notes and mortgage which I purchased from A. C. Burnham as between him and myself, but touching the transactions between the said A. C. Burnham and the defendant Call, on the consideration as between
425 them, I had not at the time of the said transaction any knowledge or information whatever; I did not acquire any knowledge or information that said defendant Call had not received the full amount of ten thousand dollars aforesaid until many months after the commencement of this suit. After the said purchase as aforesaid I had not any further transaction connected therewith to the month of November, 1876, excepting that I forwarded coupon note due May 1st, 1876, for $550.00, to Burnham, Ormsby & Co., and received their draft for the amount thereof on Gilman, Son & Co., some time during the same month of May. The said Burnham, Ormsby & Co. were then accustomed to send me their drafts on Gilman, Son & Co. for the amount of the coupon notes forwarded by me to them, and I had no knowledge
426 whether or not they were put in funds to pay the same by the party in interest.

To the eleventh interrogatory—11. Had you any suspicion when you purchased said notes and mortgage from the said Burnham that said Call had not received the full amount for which said notes were given?—he says:

I had not.

To the twelfth interrogatory—12. State if said notes purchased by you from Burnham, as above referred to, were or were not payable to the order of the said Burnham?—he says:

I am not positive; but my impression and belief is that the said principal note and coupon notes thereto attached were all payable to the order of A. C. Burnham, trustee.

To the thirteenth interrogatory—13. When you received
427 the notes and mortgage referred to in the third foregoing interrogatory, what, if any, knowledge or information had you that the defendant Call did not receive the whole or any part of the five hundred dollars which you sent to be paid to him as a part of the consideration for said notes and mortgage referred to in the said interrogatory?—he says:

I can only say in answer thereto that I deposited the sum of one thousand dollars in cash with Gilman, Son & Co. to the credit of

Burnham, Ormsby & Co., and by their direction, as I have hereinbefore stated; but what part thereof was received by the said defendant Call, or whether he received the whole or any part thereof, I never had any knowledge or information whatever.

To the fourteenth interrogatory—14. At the time you re-
428 ceived the notes referred to in the third interrogatory aforesaid what knowledge or information had you that Burnham, Ormsby and Company, or any one else, was to or had received the said five hundred dollars, or any part thereof, for any negotiation or service in anywise connected with the notes and mortgage referred to in said third interrogatory?—he says:

I had no knowledge or information whatever touching the subject-matter of the inquiry contained in the said fourteenth interrogatory.

To the fifteenth interrogatory—15. Have you ever received, directly or indirectly, or charged or agreed to receive directly or indirectly, in money, property, or anything of value, more than ten cents on the hundred by the year for the use of the sum of money expressed in the notes described in said third interrogatory?—
429 he says:

I have not, either directly or indirectly, in any manner or form whatsoever.

To the sixteenth interrogatory—16. What arrangement or agreement or understanding existed other than that expressed in the notes and mortgage referred to in the foregoing interrogatories respecting the interest or compensation for the use of the sums of money expressed in said notes, or either of them? answer fully—he says:

There was no arrangement or agreement or understanding whatever, other than that expressed in the said notes and mortgages.

To the seventeenth interrogatory—17. State fully and particularly the amount and date of each payment of interest on each of said notes—he says:

430 The five coupon notes of five hundred dollars each attached to the said first note of ten thousand dollars were severally paid at or about the time of the maturity thereof, on the first day of May and November in each year, after the date of the said note; but one coupon note of five hundred and fifty dollars, attached to the said secon dnote of eleven thousand dollars, has been paid, and which was paid by the draft of Burnham, Ormsby & Co., in May, 1876, as hereinabove stated.

To the eighteenth interrogatory—18. How long have you continuously resided at the city of New Brunswick, and what has been your business during your residence in the city of New Brunswick?—he says:

Forty-two years, and of that time was a merchant twenty-
431 three years, and for the residence of that period have not been in active business, except as hereinabove stated.

To the nineteenth interrogatory—19. Do you know any other matter or thing touching the matter in question that may tend to the benefit or advantage of the said complainant? If so, declare

the same fully and at large as if you had been particularly interrogated thereto—he says:

I can only say, in answer to this question, that I bought the first note and mortgage, for the payment of ten thousand dollars, of A. C. Burnham, and paid him ten thousand dollars in cash therefor, because it yielded ten per cent. interest, and because the payment thereof was guaranteed by the said Burnham, whom I knew, or believed, to be entirely good. With regard to the second
132 transaction, touching the new note and mortgage for eleven thousand dollars, I trusted to the representations of Burnham, Ormsby & Co., & yielded to their solicitations in making the negotiations. They stated to me that A. C. Call was a rich man for Northern Iowa; that they had good reason to believe that the interest could be paid as promptly as on the former note of ten thousand dollars, and that the mortgage or land security was ample. Trust-g entirely to these representations, acting in entire good faith, and without the least intimation of danger or of any wrong in the premises, I surrendered the said note of ten thousand dollars, and paid one thousand dollars in cash, as I have hereinbefore stated, for the note and mortgage, which I now hold.

133 To the first cross-interrogatory—1. Are you, directly or indirectly, interested in this action? And, if interested, explain the interest you have—he says:

I am directly interested as the plaintiff or complainant therein.

To the second cross-interrogatory—2. Are all your statements in the foregoing answers made from your personal knowledge? And, if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information? If not, now show what is from information, and give its source—he says:

I think that all my statements in the foregoing answers are made from my personal knowledge, and, if there should be any ex-
134 ception to the rule, I think my answers fully disclose the source of my information.

To the third cross-interrogatory—3. State everything you know concerning the subject of this action favorable to either party—he says:

I have no knowledge in reference to the case other than I have hereinabove stated.

(Signed) HENRY H. PALMER.

I, Abraham V. Schenck, United States commissioner for the district of New Jersey, do hereby certify that Henry H. Palmer, the deponent, whose place of residence is the city of New Brunswick, in the county of Middlesex, and State of New Jersey, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, and that I am
135 neither of the parties, attorney of neither, nor in anywise interested in the event of the suit; and after being by me carefully read over to the said deponent, the same was sworn to and

subscribed by the said deponent in my presence on the fourteenth day of January, A. D. 1879, between the hours ten a. m. and five p. m. of said day, at the city of New Brunswick, in the county of Middlesex, and State of New Jersey aforesaid.

Given and certified under my hand and seal official, this fourteenth day of January, A. D. 1879, at the city of New Brunswick aforesaid.

[SEAL.] (Signed) AB'M V. SCHENCK,
United States Commissioner for the District of N. Jersey.

A. V. Schenck, cor. 11.96.

(Endorsed:) Circuit court of U. S., district of Iowa. Henry H. Palmer *vs.* Asa C. Call. Depositions on part of complainant. Opened and filed May 14, 1879. E. R. Mason, c'k.

436 *Application for Loan.*

I, Asa C. Call, of the town of Algona, in the county of Kossuth and State of Iowa, hereby make application to Burnham, Ormsby & Co., of Emmetsburg, Iowa, for a loan of ten thousand dollars for a term of three years upon the following real estate, situate in the counties of Kossuth and Palo Alto and State aforesaid, to wit:

The northeast quarter of sec. 5, 95, 30, 108 acres off the southwest quarter of sec. 10, 95, 29, described as follows: The west three-fourths of the north half of said southwest qr., twenty-six (26) acres off the west side of the southwest qr. of the southwest qr.; the northeast qr. of the southeast qr. of the southwest qr., eight (8) acres off the north side of the northeast qr. of the northeast qr. of said southwest qr., and four (4) acres off the east side of the south-
437 west qr. of said southwest qr.; also sixty-four acres in the west fractional half of the northwest qr. of sec. 6, 95, 28, it being that part of said west fr. ½ of N. W. qr. situate & being north of the McGregor & Missouri River railway; the south half of the north half of sec. 20, 95, 29.

The northeast quarter of sec. 33, 95, 29. The southwest qr. of sec. (four) 4, 95, 29. The northwest quarter sec. 22, 94, 28. The brick store. Centre one-third of lot one (1), block 130, of Call's Addition to Algona. Also blocks 220, 221, 225, 226, 227, and E. ½ of block 222, in said Call's Add. to Algona.

The west half of the north two-thirds of lot one (1), and west half of the north one-third of lot four (4), and both in block 20 of Algona, the above-described lands all being in the county of Kossuth & State of Iowa. Also the east half of the southwest quarter of sec. 2.

438 The north half of the northwest fractional quarter of sec. 4.

The southeast quarter of the northwest quarter, the northeast qr. of the southeast qr.

The west half of the southwest qr. of sec. 6.

The north half of the northwest quarter, the northeast quarter of the southeast quarter, the southwest qr. of the southeast qr., & the northeast qr. of the southwest qr. of sec. 8. The southeast quarter

of the southeast qr., & twenty-nine acres off the east side of the southwest quarter of the southeast quarter of sec. 12. The south half of the northwest quarter of section fourteen (14). The north half of the northeast quarter, the southwest qr. of the northeast qr., the west half of the northwest qr., the north half of the southeast qr., & northeast qr. of the southwest qr. of sec. 18, all the aforesaid sections 2, 4, 6, 8, 12, 14, & 18 being in township
439 ninety-seven (97), range 31 west, 5th P. M., in Palo Alto county, Iowa. Also the south half of the southeast qr. & the southeast quarter of the southwest qr. of section twelve (12), township (97) ninety-seven, range thirty-two (32), in the county & State last above mentioned, and containing 2,082 acres.

I, the said applicant, agree to furnish the said Burnham, Ormsby & Co., at my own expense, an abstract of title to the premises above described, showing the title to the same to be in one and free from all liens and encumbrances, excepting such as shall be removed before the perfecting of said loan.

STATE OF IOWA, *Kossuth County:*

I further state, under oath, that the value of the premises above described is as stated below, and that there are no judgments unsatisfied against me in any of the United States courts or in
440 the supreme court of this State.

(Signed) ASA C. CALL.

We, the subscribers, freeholders, residing in the county of Kossuth and State aforesaid, do, upon oath, certify that we are well acquainted with the aforesaid premises, and we do estimate the fair value of the same, exclusive of the buildings thereon, to be twenty-eight thousand dollars, and the buildings we estimate to be worth six thousand dollars.

(Signed) O. E. PALMER.
(Signed) L. K. GARFIELD.
(Signed) J. M. PINKERTON.

Land	$28,000
Buildings	6,000
	$34,000

The foregoing statement and opinions of value were subscribed and sworn before me, this sixth day of November, 1872.

[SEAL.] (Signed) GEO. E. CLARK,
Notary Public.

441 The applicant will write his name in full here.
(S'g'd) ASA C. CALL.

The wife of applicant will write her name in full here.
(S'g'd) SARAH CALL.

Let the wife write her own name.

(Endorsed:) Applicant, Asa C. Call. P. O. address, Algona, Kos-

suth Co., Iowa. Amount, $10,000; No. acres, 2,000; valuation $34,000. Burnham, Ormsby & Co., bankers, loan and land brokers, Emmetsburg, Iowa.

442 *Application for Loan.*

Asa C. Call & Sarah, his wife, of the town of ———, in the county of Kossuth, and State of Iowa, hereby make application to Burnham, Ormsby & Co., of Emmetsburg, Iowa, for a loan of eleven thousand dollars for a term of 5 years, upon the following real estate, situate in the counties of Kossuth & Palo Alto and State aforesaid, to wit:

The northwest ¼ sec. 22, 94, 28; also sixty-four acres in the west fractional half of the N. W. ¼ of sec. 6, 95, 28, it being that part of said west fr. ½ of N. W. ¼, situate and being north of the McGregor and Missouri railway. The S. W. ¼ sec. 4, the S. W. ¼ sec. 7, 108 acres off the S. W. qr. sec. 10, described as follows: The west ¾ of the N. ½ of said S. W. ¼; 26 acres off the W. side of the S. W. ¼ of S. W. ¼.

443 The N. E. ¼ of S. E. ¼ of S. W. ¼; 8 acres off the N. side of the N. E. ¼ of N. E. ¼ of said S. W. ¼, & 4 acres off the E. side of the S. W. ¼ of said S. W. ¼. The S. ½ of N. ½ sec. 20, & the N. E. ¼ of 33, all in twp. 95, 29; the N. E. ¼ sec. 5, 95, 30.

Also, blocks 6, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 34, 36, 42, 44, 46, 48, 50, 52, 54, 56, 60, 62, 64, 66, 74, 76, 78, 80, 82, 86, 88, 94, 96, 104, 106, 108, 110, 112, 120, 122, 126, 138, 220, 221, 225, 226, 227, & E. ½ 222 in Call's Addition to Algona.

The above described lands all situated in the county of Kossuth, Iowa.

Also, E. ½ S. W. ¼ 2, the N. ½ N. W. fr. ¼ 4, S. E. N. W., the N. E. S. E. & W. ½ S. W. ¼ sec. 6, N. ½ N. W., the N. E. S. E. ¼, the S. W. S. E. & N. E. S. W. 8, the S. E. S. E. ¼, and 29 acres off the E. side of S. W. S. E. 12, S. ½ N. W. 14, N. ½ of N. E. ¼, the S. W. N. E., the W. ½ N. W., the N. ½ S. E., the N. E. of S. W. 18, all in t'w'p 97, 31; also, S. ½ S. E. & S. E. ¼ S. W. 12, 97, 32, Palo Alto county, and containing 2,350 acres, more or less.

444 I, the said applicant, agree to furnish the said Burnham, Ormsby & Co., at my own expense, an abstract of title to the premises above described, showing the title to the same to be in me and free from all liens and encumbrances, except such as shall be removed before the perfecting of said loan.

STATE OF IOWA, *Kossuth County:*

I further state, under oath, that the value of the premises above described is as stated below, and that there are no judgments unsatisfied against me in any of the United States courts or in the supreme court of this State.

(Signed) ASA C. CALL.
(Signed) SARAH CALL.

445 We, the subscribers, freeholders, residing in the county of Kossuth and State aforesaid, do, upon oath, certify that we

are well acquainted with the aforesaid premises, and we do estimate the fair value of the same, exclusive of the buildings thereon, to be thirty-five thousand dollars, and the buildings we estimate to be worth —— dollars.

Land ---------- $35,000 00
Buildings ---------- $ ——

(Signed) 2. J. M. PINKERTON.
(Signed) 3. J. W. KENYON.
(Signed) 4. O. E. PALMER.

The foregoing statement and opinions of value were subscribed and sworn to before me, this 13th day of November, 1875.

[SEAL.] (Signed) GEO. E. CLARKE,
Notary Public.
" ASA C. CALL.
" SARAH CALL.

446 The applicant will write his name in full here.
The wife of applicant will write her name in full here.
Let the wife write her own name.

(Endorsed:) Henry H. Palmer. 550 int. due Nov. 1, '77. Applicant, Asa C. Call. P. O. address, Algona, Iowa. Amount, $11,000.00 No. acres, 2,350, more or less. Valuation, $35,000.00. Burnham Ormsby & Co., bankers, loan and land brokers, Emmetsburg, Iowa.

447 *Stipulation.*

U. S. Circuit Court, District of Iowa.

HENRY H. PALMER } *vs.* ASA C. CALL. } Eq. No. 969.

It is stipulated and admitted that the letters hereunto attached are in the handwriting of members of the firm of Burnham, Ormsby and Co., mentioned in the pleadings other than Asa C. Burnham, and that they were written to defendant and received by him at about the dates thereof; that the receipt hereto annexed was delivered to defendant by one of the members of said firm other than said Burnham, at about the date thereof. Said letters and receipt are marked Exhibits Nos. 1, 2, 3, 4, 5, and 6, respectively, and are admitted in evidence subject to all objections for incompetency, immateriality, and irrelevancy.

448 All objections to documentary evidence and depositions for immateriality, irrelevancy, and incompetency may be taken by argument in this or any other court to which this suit may be carried.

(Signed) GEORGE E. CLARKE,
WRIGHT, GATCH & WRIGHT,
(Signed) HUBBARD & CLARK,
For Def't,
(Signed) J. D. SPRINGER, *For Compl't.*

(Endorsed:) Henry H. Palmer *vs.* Asa C. Call. Stipulation.

449 Ex. No. 1.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan & Land Brokers,
EMMETSBURG, IOWA, *Dec. 26th*, 1872.

ASA C. CALL, *Algona, Ia.*

DEAR SIR: Below we give you a statement of your account to date. We must retain 1,000 until the arrival of our Mr. E. S. O., in Jan., to substitute some other land in place of the indemnity bond tract, as he refuses to re-lease.

First payment commission:

		ets.	2,000	
Nov.	8.	D'ft	2,000	
"	18.	Note taken up	204	
"	19.	Check	100	
"	20.	"	900	
"	23.	D'ft	1,000	
Dec.	3.	Livery paid by E. S. O. to your ac.	8	
"	3.	D'ft Geo. W. Bassett col. lease 93	328	60
		Dr't Lawrence mortgage	682	95
450	Dec. 21.	Check	1,000	
	" "	E. S. O. paid Wheelock, rec'd tax sale land	43	35
Dec.	26.	Geo. W. Bassett, stamps on assignment col. lease 93	1	00
			$8,267	90

(Endorsed:) Burnham, Ormsby. Dec. 12. Account stated.

451 Ex. No. 1.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan & Land Brokers,
EMMETSBURG, IOWA, —— —, 187–.

Your check will at any time be honored for $732.10. We would be glad to have everything connected with the title closed up, and the loan, too, and presume you would the same, but don't see how it can be done at once. Epizootic keeps our mail delayed, and we loll around with but little to do.

Very truly,
(Signed) BURNHAM, ORMSBY & CO.

452 Ex. No. 2.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan & Land Brokers,
EMMETSBURG, IOWA, *July 11th*, 1873.

Hon. A. C. CALL, *Algona, Iowa.*

D'R SIR: Mr. Burnham declines to receive less than one thousand dollar payments, as per his agreement with you when loan was made. His extensive business and absence from home so much compels him to make this rule with all his borrowers.

Very truly, yours,
(Signed) BURNHAM, ORMSBY & CO.

(End.:) Important letter from B., O. & Co. This letter does not look as if Maggie J. Davidson had much to do in the matter.

453 Ex. No. 3.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan, & Land Brokers,
EMMETSBURG, IOWA, *Oct.* 21, 1873.

ASA C. CALL, *Algona.*

D'R SIR: This mortgage loan is now owned by a party in New Brunswick, N. J., who must have his interest there by Nov. 1st. We therefore are compelled to remit it long enough in advance to have it reach its destination by the time it is due, or it will go to protest.

We cannot in the present state of finances advance this money, and will be compelled to let it go to protest and foreclosure if it is not attended to by you. We notified you, as we thought, in
454 time for you to raise the money. It is out of our power to assist you, although we would gladly do so if we could.

Respectfully,
(Signed) BURNHAM, ORMSBY & CO.

(Endorsed:) Oct. 4, '73. B., O. & Co. Saving loan, owned by party in *M.* B.

455 Ex. No. 4.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan, & Land Brokers,
EMMETSBURG, IOWA, *Oct.* 24, 1873.

A. C. CALL, Esq., *Algona.*

D'R SIR: We regret to have to refuse you the name of the party but our reason is this: He is a large investor, and is one who to fail to have his interest paid at the day would never send us a dollar more.

We cannot hazard our reputation as loan agents by so doing. If it were in our power we would accommodate you ourselves, but this being the first interest payment to him he would have distrust in our ability to place good loans.

Respectfully,

(Signed) BURNHAM, ORMSBY & CO.

(End.:) Oct. 24, 1873. B., O. & Co. Refusing name of mortgagee.

456 Ex. No. 5.

A. C. Burnham, Champaign, Ills. E. S. Ormsby. A. L. Ormsby.

BURNHAM, ORMSBY & Co.,
Bankers, Loan, & Land Brokers,
EMMETSBURG, IOWA, *Dec. 9th*, 1875.

A. C. CALL, Esq., *Algona, Iowa.*

DEAR SIR: We are surprised you let your lands go to tax sale here Monday, especially those under the mortgage.

Your statement of ass's is as follows:

Cr. by loan H. H. Palmer			11,000 00
Dr. p'd loan A. C. Burnham		10,000 00	
Interest coupon, Nov. 7		500 00	
Com. on new loan		550 00	
	50 00		
	10 70		
Due from A. L. Ormsby on lot			39 30
			11,039 30
	11,050 00		
	11,039 30		
Bal. due from you	10 70		

And we succeeded in getting your taxes held off from tax sale, or rather bid them off; but if money is here in a day or two it
457 will be all right. You had better send us over $300, and we will make statement, and if balance your due, will send it back promptly. This must have your immediate attention.

Respectfully, (S'g'd) BURNHAM, ORMSBY & CO.

458 Ex. No. 6.

Rec'd of Asa C. Call his mortgage & coupon notes for 11,000 dollars given to Henry H. Palmer, and when titles & abstracts for lands described in said mortgage are complete, *lines* received, & taxes paid the old mortgage & notes for 10,000 given to A. C. Burnham are to be delivered to him with bal. of one thousand dollars not used in commission & taxes.

November 19th, 1875.

(Signed) BURNHAM, ORMSBY & CO.

(Endorsed:) Burnham, Ormsby & Co. Rec't for 11,000, notes.

459 And the defendant, to sustain the issues in his behalf, introduced upon the hearing the following evidence, to wit:

460 CIRCUIT COURT OF THE UNITED STATES, } ss:
District of Iowa, }

To Ralph C. Richards, a notary public within and for Cook county, in the State of Illinois, Greeting:

Know ye that in confidence of your prudence and fidelity you have been appointed, and by these presents you are invested, with full power and authority to examine Asa C. Call on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein Henry H. Palmer is plaintiff and Asa C. Call defendant, on the part of the defendant, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that at certain days and places to be appointed by you for that purpose you do cause the said Asa C. Call to come before you, and then and there examine him on oath
461 upon the said interrogatories. That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you. That you take said depositions, in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa. That you endorse on the outside of said envelope thus directed
462 the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of January, 1879, and in the 103d year of the Independence of the United States of America.

Attest: (Signed) [SEAL.] EDWARD R. MASON,
Clerk of the United States Circuit Court, District of Iowa.

463 *Instructions for Taking Depositions.*

The officer taking the deposition will observe the following forms and mode of proceeding, commencing thus:

Depositions of witnesses produced, sworn, and examined at ——, in the county of —— and State of ——, before me (name of officer and style of office), in a certain cause now pending in the —— court of —— county, State of Iowa, between —— ——, plaintiff, and —— ——, defendant, on the part of the ——.

N. O., of lawful age, being produced, sworn, and examined on the part of the ——, deposeth and saith (here insert each interrogatory as it occurs and the answer thereto immediately following).

NOTE.—Every deposition must be reduced to writing by some person who is neither of the parties, attorney of neither, nor
464 in anywise interested in the event of the suit, in the presence of the officer before whom it is taken, and signed by the witness.

If any paper or exhibit is produced and proved, or referred to by a witness, it ought to be described in his depositions, and marked and referred to by the deponent in such a manner that it may be identified when the deposition is read; and all such papers and exhibits must be attached to and returned with the deposition.

The officer will annex at the foot of the deposition of each witness the following certificate:

"I, (insert name of officer and style of office) do hereby certify that N. O., the deponent, whose place of residence is (here insert it), was by me sworn (or affirmed) to testify the whole truth of his (or her) knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his (or her) examina-
465 tion reduced to writing by (here name the person), who is neither of the parties, attorney of neither, nor in anywise interested in the event of the suit, and after being by me carefully read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the (here insert the date), between the hours of — a. m. and — p. m. of said day, at (here insert the place, county, and State). Given and certified (here give the date) under my hand and seal, official, this —— day of ——, 187–. (If the officer has a seal it must be affixed.)

—— ——."

Then proceed with other depositions (if any) in the same form, annexing a like certificate to each.

When all the witnesses who appear have been sworn and examined and their depositions reduced to writing, subscribed, and
466 certified to as above, the officer will attach to the depositions all papers and exhibits proved or referred to in the examination, the commission and notice (herewith inclosed), with the following certificate endorsed thereon or attached thereto:

"THE STATE OF ——, } ss:
County of ——, }

I, (name the office and style of office), within and for (name the place), or duly commissioner for that purpose, do certify that in pursuance of the within (or annexed) commission and notice, came before me, at (the place where the testimony was taken), N, O, P, D, & C (insert the names of the witnesses), who were by me sworn and examined, and such examination reduced to writing by (name the person), who is neither one of the parties, their attorney, nor in anywise interested in the event of the suit; and after being by me read

over to each of said defendants the same was sworn to and
467 subscribed by said witnesses, respectively, in my presence, and their said depositions are now herewith returned.

Given under my hand and seal official, hereto affixed at (name of place, county, and State), this (give the date).

—— ——."

The return must be accompanied by a certificate of the official character of the officer when the depositions are taken by any judge, notary public, or justice of the peace, attested to by the seal of the State of —— or by the seal of any court of record of the county and city wherein such depositions shall be taken, which may be in the following form:

It is hereby certified that —— ——, on (here insert the date at which the depositions are taken and certified), was, (and now is), (state the style of office), State of ——, duly commissioned,
468 and acting as such, and that full faith and credit are due to his acts as such.

In testimony whereof I, A. B. (here state the style of office), have hereunto subscribed my name and affixed the seal of said court, at office, this —— day of ——, eighteen hundred and ——.

[L. S.] A. B.

The officer taking the depositions is required to enclose in a strong envelope, securely sealed, the depositions, papers, and exhibits, commission, notice, and certificates, and direct the same to the clerk of the —— court of —— county, Iowa, noting on some convenient part of the envelope the style of the cause and contents, thus:

——— }
vs. } Depositions on part of ———.
——— }

If the packet is to be transmitted by mail it will be necessary to enclose it (directed and endorsed) in another envelope, directed to ——— ———, in order to insure its being taken out of the
469 post-office.

The depositions must be begun on the day mentioned in the notice. If they cannot be completed on that day, the taking of them may be adjourned to the succeeding day, at the same place and between the same hours. The person taking them should in such case make the following entry closing the business of that day:

"Not being able to complete the taking of said depositions, by reason that (here insert the reason), I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

P. F."

On the succeeding day let the person taking the depositions commence as follows:

Pursuant to the adjournment, as above stated, on —— day of ——, in the year eighteen hundred and ——, between the
470 hours of —— in the forenoon and —— in the afternoon, at the ——, I continued the taking of said depositions, as follows:

N. O., in continuance of his depositions commenced yesterday, on his oath, further says, etc.

The foregoing directions must be strictly observed, or the depositions will be unavailing.

If the officer taking the deposition has a seal of office, it must be affixed to every certificate. The officer taking the deposition must write out each interrogatory in full, and insert the answer just below the proper question.

471 *Notice of suing out Commission to take Depositions.*

In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

To the above named complainant, or to J. D. Springer, his attorney

You are hereby notified that on the 31st day of January, 1879, the defendant in the above-entitled cause will sue out of the office of the clerk of the United States circuit court for the district of Iowa a commission in said cause to take the deposition of the defendant Asa C. Call, as a witness in said cause on his own behalf, upon written interrogatories hereto annexed, and suggesting that said commission be directed to Ralph C. Richards, a notary
472 public within and for Cook county, in the State of Illinois, and residing at Chicago, in the county and State aforesaid; you can file cross-interrogatories if you think proper.

(Signed) GEO. E. CLARK.

WRIGHT, GATCH & WRIGHT,
HUBBARD & CLARK,
Sol's for Def't.

Due service of the within notice & interrogatories & receipt of copy of same admitted this 18- day of January, 1879.

(Signed) J. D. SPRINGER,
Sol. for Compl't.

473 In the Circuit Court of the United States, District of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL.

Interrogatories to be propounded to the above-named defendant, Asa C. Call, as a witness on his own behalf in the above-entitled suit, in pursuance of the commission issued herein.

Int. 1. State your name, age, occupation and place of residence.

Int. 2. Are you the defefendant in this suit? Are you acquainted

with the plaintiff, Henry H. Palmer? If so, how long have you known him?

Int. 3. Are you acquainted with A. C. Burnham, E. S. Ormsby, and A. L. Ormsby, comprising the firm of Burnham, Ormsby
474 and Company, Emmettsburg, Iowa? If so, how long have you known each of them, and what business is or was said firm engaged in at any time when you had business or transactions with said firm?

Int. 4. Did you, about the 1st day of November, 1872, procure a loan from A. C. Burnham, of the firm of Burnham, Ormsby and Company, of Emmettsburg, Iowa, for which you executed to said Ormsby your principal promissory note for ten thousand dollars, due about the 1st day of November, 1875, with interest coupon notes attached, and secured by a mortgage on certain lands in Iowa, executed by you to said Burnham on the same date? If so, state what amount of money the said Burnham actually loaned and paid to you as the consideration for said note and mortgages.

475 Int. 5. If, in your answer to the last preceding interrogatory, you have said that you made a loan to the said A. C. Burnham, and executed to him your note and mortgage, now state if you had any conversations, negotiations, or agreement with the said A. C. Burnham in person, touching said loan; if you did, state when and where such conversations, negotiations, or agreement took place or were made, and give the details thereof in full. If your negotiations were partly with Burnham and partly with the firm of Burnham, Ormsby and Company, state what negotiations or agreements you had with each, and what, if anything, the said Burnham told you in relation to the said firm of Burnham, Ormsby and Company acting for him in the business of such loan.

476 Int. 6. If you have said that you received less than ten thousand dollars as the consideration for said note and mortgage, now state what agreement you had with the said Burnham, either in person or through the firm of Burnham, Ormsby and Company, in relation to giving your note and mortgage for more than the amount of money received by you, and state when and where such agreement was made; state whether or not in making such loan you agreed with said firm of Burnham, Ormsby and Company, or any member thereof, to pay said firm, or any member thereof, the sum of two thousand dollars if such firm or a member thereof would negotiate and procure for you a loan of ten thousand dollars as a commission or compensation to said firm, or any member thereof, for securing such loan.

477 Int. 7. State whether or not in making said loan, or in executing your said note and mortgage to the said Burnham, or in any negotiations or conversations in relation to such loan or note and mortgage you were in any manner informed by said Burnham or any member of said firm that the money loaned you belonged to one Maggie J. Davison; state when you first learned or understood that it was claimed that the money loaned you belonged to the said Maggie J. Davison.

Int. 8. When, where, and of whom did you receive the money loaned you on your said note and mortgage?

Int. 9. What payments of interest did you make on your said note and mortgage after effecting said loan; when, where, and to whom did you make such payments?

478 Int. 10. State whether or not prior to the 1st day of November, 1875, you applied to any person or persons for the renewal of said loan; and, if so, state when and to whom you made such application, and what agreement or negotiations you had with such person or persons in relation to the same.

Int. 11. State whether, about the 1st of November, 1875, you negotiated from the plaintiff, Henry H. Palmer, a loan of eleven thousand dollars, either through Burnham, Ormsby and Company, or either of them, or any other person or persons.

Int. 12. State whether or not you at any time prior to the execution of the note and mortgage sought to be foreclosed in this suit employed the firm of Burnham, Ormsby and Company, or any member of that firm, to negotiate for you a loan of eleven

479 thousand dollars, and whether or not you agreed to pay said firm or any member thereof the sum of five hundred dollars, or any other sum, as commission or compensation for negotiating said loan.

Int. 13. State what the consideration was for your note and mortgage of eleven thousand dollars to the complainant, Henry H. Palmer, which note and mortgage he seeks to foreclose in this suit.

Int. 14. If you have stated in your answer to the last preceding interrogatory that the consideration for the note and mortgage in suit was the surrender of your former note and mortgage to A. C. Burnham and an extension of that loan, state whether said note and mortgage were surrendered to you at the time you delivered

480 the note and mortgage in suit; and, if so, state when, where, and by whom your said mortgage and note were delivered up to you; who acted for the complainant Palmer in the transaction throughout; who received from you your note and mortgage to the complainant Palmer sought to be foreclosed in this suit.

Int. 15. State with whom you conducted the negotiations throughout for the note and mortgage to the complainant Palmer upon which he brings this suit. What authority did you give such person or persons, directly or indirectly, to act for you in the negotiations touching said note and mortgage; whom did such person or persons in fact act for throughout such negotiations?

Int. 16. State fully what conversations, negotiations, or agreements you had with the person or persons who delivered up to you

481 your note and mortgage of ten thousand dollars, executed to A. C. Burnham, hereinbefore referred to, and received from you your note and mortgage of eleven thousand dollars, which is the subject-matter of this suit, to the complainant Palmer, and state fully when and where such conversations, negotiations, and agreements occurred or were made.

Int. 17. State what payments of interest, or otherwise, you have at any time made on your note in suit of eleven thousand dollars

to the complainant Palmer, and when, where, and to whom you made such payments.

Lastly. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at
482 issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) GEO. E. CLARK,
" WRIGHT, GATCH & WRIGHT, &
" HUBBARD & CLARK,
Solicitors for Defendant.

(Endorsed:) Henry H. Palmer *vs.* Asa C. Call. Notice and interrogations. Filed Jan. 30, 1879. E. R. Mason, clerk. Hubbard & Clark, sol's for def't.

483 In the Circuit Court of the United States, Dist. of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL. } No. —. Ch'y.

Cross-interrogatories propounded by the complainant, HENRY H. PALMER, to the defendant, ASA C. CALL.

Cross-int. 1. Where are the notes and mortgage referred to in the fourth (4) direct interrogatory, and when, from whom, and where did you receive the same?

Cross-int. 2. Did you receive a release from A. C. Burnham, or any one else, of the mortgage referred to in cross-interrogatory No. one (1); &, if so, where is it now?

Cross-int. 3. Attach to your answers to the foregoing cross-
484 interrogatories the notes and mortgage and releases, or such of them as are in your possessionor under your control; and if you cannot do so, state why, fully and particularly.

Cross-int. 4. If you cannot or will not attach said papers to said answers, will you produce the same on the hearing of this cause at the May term, 1879; &, if not, why not? Answer fully as to each paper.

Cross-int. 5. Did you receive the coupon notes from time to time, as you paid the same—that is, those given to Burnham; &, if so, what endorsements were on the same, or any of them? Answer fully as to each one.

Cross-int. 6. Did you request Burnham, Ormsby & Co., or any member of the firm, to negotiate a loan for you at or before you executed the notes and mortgage in question to A. C. Burn-
485 ham, or did Burnham, Ormsby & Co., or any member of the firm, importune you to take the money? State fully who first introduced the subject of a loan.

Cross-int. 7. Where do you now reside, and how long have you resided there?

Cross-int. 8. How long have you been in Chicago, Ills.?

Cross-int. 9. Were you in Algona, Iowa, in October, November, & December, 1878, & January, 1879, or either of said months, & how long were you at Algona, Iowa, in each of said months, and what days of each of said months were you in the said town of Algona?

Cross-int. 10. Why did you not pay the note you made to Burnham when it became due?

486 Cross-int. 11. When the Burnham note principal became due, or a short time before, did you request Burnham, Ormsby & Co. to procure an extension or a new loan for you; and, if not, how did it come that — got an extension for you and an additional loan?

Cross-int. 12. Is it not true that you had not the money in hand to pay said Burnham loan up?

Cross-int. 13. Are you not a member of the bar, and have you not been a practising attorney for some years? State fully.

Cross-int. 14. Why is your depositions being taken in Chicago, Ills., before a commissioner, or interrogatories, instead of before the master at your home in Algona, Iowa?

487 Cross-int. 15. Do you know E. B. Soper, one of complainant's solicitors; if so, how — does he reside from Algona, Iowa?

Cross-int. 16. Do you know J. D. Springer, another of complainant's solicitors; and, if so, how far does he reside from Algona?

Cross-int. 17. Does George E. Clark, one of your solicitors, reside at Algona, Iowa, and was he not in partnership with you in the practice of the law for several years?

(Signed) J. D. SPRINGER,
Sol. for Compl't.

(Endorsed:) Filed Jan. 30th, 1879. E. R. Mason, clerk.

488 UNITED STATES OF AMERICA, } ss:
District of Iowa, }

And Circuit Court thereof.

HENRY H. PALMER *vs.* ASA C. CALL.

Deposition of witness produced, sworn, and examined at Chicago, in the county of Cook and State of Illinois, before me, Ralph C. Richards, a notary public in and for said county and State, in a certain cause now pending in said circuit court of the United States for the district of Iowa, between Henry H. Palmer, plaintiff, and Asa C. Call, defendant, on the part of the defendant.

ASA C. CALL, of lawful age, being produced, sworn, and exa mined *of* the part of the defendant, deposes and says:

Interrogatory First. State your name, age, occupation, and
489 place of residence.

Answer. Name, Asa C. Call; age, fifty-three years; occupation, dealer in real estate; residence, Algona, Kossuth county, Iowa.

Interrogatory Second. Are you the defendant in this suit; are you acquainted with Henry H. Palmer; if so, how long have you known him?

Answer. I am the defendant in this suit. I am not acquainted with the plaintiff, Henry H. Palmer. I never saw him, and do not know where he lives.

Third Interrogatory. Are you acquainted with A. C. Burnham, E. S. Ormsby, and A. L. Ormsby, comprising the firm of Burnham, Ormsby & Co., Emmetsburg, Iowa; if so, how long have you
490 known each of them, and what business is or was said firm engaged in at any time when you had business or transactions with said firm?

Answer. I am acquainted with E. C. Burnham and E. S. Ormsby and A. L. Ormsby, composing the firm of Burnham, Ormsby & Co., Emmettsburg, Iowa. I first met Mr. Burnham in 1872, and knew the Ormsbys at that time. I do not remember when I first met them. They were engaged in banking and lending money.

Interrogatory Fourth. Did you, about the 1st day of November, 1872, procure a loan from A. C. Burnham, of the firm of Burnham, Ormsby & Co., of Emmettsburg, Iowa, for which you executed to said Ormsby your principal promissory note for ten thousand dollars, due about the first day of November, 1875, with interest coupon
491 notes attached, and secured by a mortgage on certain lands in Iowa, executed by you to said Burnham on the same date; if so, state what amount of money the said Burnham actually loaned and paid to you as the consideration for said note and mortgage.

Answer. I did, about the 1st day of November, 1872, procure a loan from said A. C. Burnham, for which I executed to Burnham my principal promissory note for ten thousand dollars, due about the 1st day of November, 1875, with interest coupon notes attached, and secured by a mortgage on lands in Iowa, executed by me to said Burnham on the same date. Mr. Burnham agreed to pay me $8,000.00 for said notes and mortgage; he paid me $8,000.00, less some money that he claimed he paid out to remove incumbrances on the mortgaged land; the amount so retained amounted to
492 several hundred dollars. I cannot tell here the exact sum.

Interrogatory Five. If in your answer to the last preceding interrogatory you have said that you made a loan of the said A. C. Burnham and executed to him your note and mortgage, now state if you had any conversation, negotiations, or agreement with the said A. C. Burnham in person touching said loan. If you did, state when and where such conversation, negotiations, or agreement took place or were made, and give the detail thereof in full; if your negotiations were partly with Burnham and partly with the firm of Burnham, Ormsby & Co., state what negotiations or agreements you had with each and what, if anything, the said Burnham told you in relation to the firm of Burnham, Ormsby & Co. acting for him with the business of such loan.

493 Answer. At the time I negotiated the loan I had a conversation with said A. C. Burnham and with no one else upon that subject, and there was no one else present at the time of the conversation. The agreement for the loan was made with Mr. A. C. Burnham in person, in the house of Mr. Ormsby in Emmettsburg, Iowa. I first spoke to Mr. Ormsby about a

loan and he told me that the firm had no loans on hand but that Mr. Burnham would be in Emmettsburg in a few days and I could see him. When Mr. Burnham came I called on him and he told me that he had $10,000 of his own money that he could lend me if we could agree upon the terms and the security was satisfactory. (This was at Mr. Ormsby's house). He talked as if he could use his money with great profit, and I think intimated about
494 what he expected, though I am not able to give his words. I then told him that if he would let me have the $10,000 I would give him my note for $12,000 at ten per cent. payable in five years, he considered a while and then said, if you will give me your note for $10,000 at ten per cent., payable semi-annually, and due in three years, I will let you have eight thousand dollars; he said that this was his own money and that the firm had nothing to do with it. He said the Ormsby boys were his nephews, that they had but little money of their own, and that he had let them have $10,000 previous to this (when they came to Iowa) to start a business, but that they had no interest in the money he was lending me and had nothing to do with it. I don't pretend to give his exact words. I told him I would accept his offer and make the securities satisfactory.

495 Interrogatory Sixth. If you have said that you received less than $1,000.00 as the consideration for said note and mortgage, now state what agreement you had with the said Burnham, either in person or through the firm of Burnham, Ormsby & Co., in relation to giving your note and mortgage for more than the amount of money received by you, and state when and where such agreement was made. State whether or not in making such loan you agreed with said firm of Burnham, Ormsby & Co., or any member thereof, to pay said firm, or any member thereof, the sum of two thousand dollars if such firm or a member thereof would negotiate and procure for you a loan of $10,000.00, as a commission or compensation to said firm, or any member thereof, for securing such loan.

496 Answer. In answer to interrogatory five I have stated the amount of money received, and where and when the negotiation by which I received the money was had. I did not agree with said firm of Burnham, Ormsby & Co., or any member thereof, to pay said firm of Burnham, Ormsby & Co., or any member thereof, the sum of two thousand dollars, or any amount whatever, if such firm, or any member thereof, would negotiate and procure for me a loan of $10,000.00, as a commission or compensation to said firm, or any member thereof, for securing said loan. The only arrangement that I had in relation to borrowing this money was the arrangement I made with said Burnham individually, as set forth in answer to the fifth interrogatory. Neither in that conversation nor in any
497 subsequent conversation no mention was made about any commission or compensation, as no member of the firm had been retained by me to secure the loan, and Mr. Burnham told me the money which he loaned me was his own.

Interrogatory Seven. State whether or not in making said loan, or

in executing your said note and mortgage to the said Burnham, or in any negotiations or conversations in relation to such loan or note and mortgage, you were in any manner informed by said Burnham, or any member of said firm, that the money loaned you belonged to one Maggie J. Davison. State when you first learned or understood that it was claimed that the money loaned you belonged to the said Maggie J. Davison.

498 Answer. I never heard of Maggie J. Davison or that this money belonged to her until after this suit was commenced. I never heard it claimed or intimated by any person that the money belonged to any other person than A. C. Burnham until after this suit was commenced. I wrote to Burnham, Ormsby & Co. inquiring if they would receive part of the money and release part of the mortgage, and received from them a letter in which they spoke as if the money belonged to Mr. Burnham. I have the letter at home but cannot attach it as it is not here.

Interrogatory Eighth. When, where, and of whom did you receive the money loaned you on your said note and mortgage.

499 Answer. I received it at several different times, it being paid in installments. A portion of the money was not paid me for several weeks after the execution and delivery of the note and mortgage, as it was claimed there was some cloud upon the property. I think the money was all received by me at Algona in drafts on Chicago. I don't recollect who handed me the draft, and I think part of them were sent to me through the mails.

Interrogatory 9th. What payments of interest did you make on your said note and mortgage after affecting said loan. When, where, and to whom did you make such payments?

500 Answer. I paid five hundred dollars as interest each six months up to the time of the renewal of the note, and one payment of $550.00 as interest after the renewal. I am not certain but what I paid two installments of interest after the renewal of the note. The note was renewed in 1875. The money was paid to the firm of Burnham, Ormsby & Co. at Emmettsburg.

Interrogatory 10th. State whether or not prior to the first day of November, 1875, you applied to any person or persons for the renewal of said loan; and, if so, state when and to whom you have made such application and what agreement or negotiations you had with such person or persons in relation to the same.

501 Answer. I cannot state positively when the matter of the renewal was first spoken of. Before the first day of November, 1875, I had been told by Mr. Ormsby that the note had been sold to one Palmer, and I wrote to Burnham, Ormsby & Co. and enquired for the address of said Palmer. I did not keep a copy of my letter. Burnham, Ormsby & Co. replied by letter saying that they declined to give me Mr. Palmer's address. I haven't that letter here or I would attach it. I then regarded Palmer as a myth. After the note became due Mr. Ormsby came to my house in Algona and after talking the matter over he agreed to renew the note if I would raise it to $11,000. This we did and I also paid him at that time $500 interest which was then due on the first note. This $500

was paid by raising the amount of the note. The balance of the increases was considered as a bonus for extending the note at the request of said Ormsby. I made said new note payable to Henry H. Palmer.

502 Interrogatory 11th. State whether about the 1st of November, 1875, you negotiated from the plaintiff, Henry H. Palmer, a loan of $11,000.00, either through Burnham, Ormsby & Co., or either of them, or any other person or persons.

Answer. I did not negotiate any such loan at that or any other time through Burnham, Ormsby & Co. or anybody else.

Interrogatory 12th. State whether or not you, at any time prior to the execution of the note and mortgage sought to be foreclosed in this suit, employed the firm of Burnham, Ormsby & Co., or any member of that firm, to negotiate for you a loan of $11,000.00, and whether or not you agreed to pay said firm, or any member thereof, the sum of $500.00, or any other sum, as commission

503 or compensation for negotiating said loan.

Answer. I did not then or at any other time employ the firm of Burnham, Ormsby & Co., or any member of said firm, to negotiate a loan of $11,000.00, and did not agree or offer to pay them or either of them the sum of $500.00 or any other sum for negotiating such loan.

Interrogatory 13th. State what the consideration was for your note and mortgage of $11,000.00 to the complainant, Henry H. Palmer, which note and mortgage he seeks to foreclose in this suit.

Answer. The consideration of the note and mortgage of $11,000.00 to Henry H. Palmer, which is sought to be foreclosed in this suit, was the surrender of my former note and mortgage for

504 $10,000 to A. C. Burnham and an extension of that loan.

Interrogatory 14th. If you have stated in your answer to the last preceding interrogatory that the consideration for the note and mortgage in suit was the surrender of your former note and mortgage to A. C. Burnham and an extension of that loan, state whether said note and mortgage were surrender- to you at the time you delivered the note and mortgage in suit; and, if so, state when, where, and by whom your said mortgage and note were delivered up to you, who acted for the complainant Palmer in the transaction throughout, who received from you your note and mortgage to the complainant Palmer sought to be foreclosed in this suit.

Answer. When I gave the note for the renewal with the

505 mortgage at my house to Mr. Ormsby, he said he had not the old note with him, but he gave me a statement in writing, being a receipt for the new note and mortgage, saying that I was entitled to have the old note delivered up, and he agreed to so deliver it. I think the note was sent to me by mail. I don't remember whether the old mortgage was delivered to me or not. It was satisfied on the record. Mr. Ormsby acted for the complainant Palmer in the transaction, and he received from me my note and mortgage to the complainant Palmer sought to be foreclosed in this suit.

Interrogatory 15th. State with whom you conducted the negotia-

tions throughout for the note and mortgage to the complainant, Palmer, upon which he brings this suit. What authority did you give such person or persons, directly or indirectly, to act for
506 you in the negotiations touching said note and mortgage; whom did such person or persons in fact act for throughout such negotiations?

Answer. The negotiations referred to in the interrogatory were all with Mr. Ormsby. I never gave him or any other person, directly or indirectly, any power to act for me in relation to the negotiations for the new note and mortgage. In all that Mr. Ormsby had to do in the matter he acted for Mr. Burnham or Mr. Palmer.

Interrogatory 16th. State fully what conversation-, negotiations, or agreements you had with the person or persons who delivered up to you your note and mortgage of $10,000.00, executed to A. C. Burnham, hereinbefore referred to, and received from you
507 your note and mortgage of $11,000.00, which is the subject-matter of this suit, to the complainant, Palmer, and state fully when and where such conversations, negotiations, and agreements occur-ed or were made.

Answer. The arrangement for extending the time on the $10,000 note was made with Mr. Ormsby at my residence in Algona, Iowa. He said he would charge me five hundred dollars as a bonus for extending the note, and as there was an installment of interest due, amounting to five hundred dollars, he said he would make the new note eleven thousand dollars to cover the interest and bonus. I objected to paying so large a bonus, but he insisted that it was a very small bonus; that if it was an original transaction he wouldn't do it so cheap, but as this was only an extension he was willing
508 to do it for that amount. This occur-ed shortly after November 1st, 1875. I don't remember the day. In giving this conversation I have been unable to give Mr. Ormsby's exact language, but have done so substantially and as near as I can.

Interrogatory 17th. State what payments of interest or otherwise you have at any time made on your note in suit of $11,000.00 to the complainant, Palmer, and when, where, and to whom you made such payments?

Answer. All payments that I have made on the note were made to Burnham, Ormsby & Co. I think I paid but one installment of interest, being five hundred [and] fifty dollars, but I may have paid more. I can't tell certainly without my books. I know I made that one payment.

509 Interrogatory 18th. Lastly, do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I cannot think of anything further that would be of benefit to either of the parties hereto.

510 Cross-interrogatories:

X Int. First. Where are the notes and mortgage referred to in the fourth direct interrogatory, and when, from whom, and where did you receive the same?

Answer. I think I have them, or some of them among my papers at Algona, but I am not sure whether the mortgage was returned to me, and am not sure whether I have preserved all the notes. All I have I received from Burnham, Ormsby & Co., the coupon notes as they were paid, and the principal note when it was extended and the new note given; I think I received some of them in person and some were sent me by mail.

X Int. Second. Did you receive a release from A. C. Burn-
511 ham or any one else of the mortgage referred to in cross-interrogatory number one; and if so, where is it now?

Answer. I don't remember whether the principal mortgage was satisfied on the margin of the record or by recording an instrument. If I had an instrument releasing the mortgage I should think it was among my pagers at Algona.

X Int. Third. Attach to your answers to the foregoing cross-interrogatories the notes and mortgage and releases, or such of them as are in your possession or under your control, and if you cannot do so, state why fully and particularly.

Answer. I have none of the papers referred to in this cross-interrogatory here, and so cannot attach them.

512 X Int. Four. If you cannot or will not attach said papers to said answers, will you produce the same on the hearing of this cause at the May term, 1879; and, if not, why not? Answer fully as to each paper.

Answer. I will produce all the papers in relation to this matter at the May term, 1879, that I can find that my counsel advise me that it is my duty to produce.

X Int. Five. Did you receive the coupon notes from time to time as you paid the same; that is, those given to Burnham; and, if so, what endorsements were on the same or any of them? Answer fully as to each one.

Answer. I think I received all the coupon notes from time
513 to time as they were paid. I do not know what endorsements were on them or any of them.

X Int. Six. Did you request Burnham, Ormsby & Co., or any member of the firm, to negotiate a loan for you at or before you executed the notes and mortgage in question to A. C. Burnham, or did Burnham, Ormsby & Co., or any member of the firm, importune you to take the money? State fully who first introduced the subject of a loan.

Answer. I did not request Burnham, Ormsby & Co. or any member of the firm to negotiate a loan for me at or before the time when I executed the notes and mortgage to A. C. Burnham. I wanted a loan and asked Mr. Ormsby if he could arrange it. He said
514 he could not, but that Mr. Burnham would be in Iowa in a few days and I could see him. When Mr. Burnham came I

went to see him, and he said that he had ten thousand dollars in money of his own then on hand, and that he would lend it to me if we could agree upon terms, and if the security was satisfactory. Neither he nor any member of the firm of Burnham, Ormsby & Co. importuned me take any money.

X Int. Seven. Where do you now reside, and how long have you resided there?

Answer. My home is at Algona, Iowa; I have lived there twenty-four years.

X Int. Eight. How long have you been in Chicago, Illinois?

515 Answer. I have been in Chicago this last time between three and four weeks.

X Int. Nine. Were you in Algona, Iowa, in October, November, and December, 1878, or January, 1879, or either of said months, and how long were you at Algona, Iowa, in each of said months, and what days of each of said months were you in the said town of Algona?

Answer. I was not in Algona nor in Iowa at any time during the months of October or November, nor in December until the twenty-second; I reached Algona on the evening of December 22nd, 1878, and left there for Chicago on the morning of January 13th, 1879.

X Int. Ten. Why did you not pay the notes you made to Burnham when it became due?

516 Answer. Because I thought it more to my interest to extend it than to pay it.

X Int. Eleven. When the Burnham note (principal) became due, or a short time before, did you request Burnham, Ormsby & Co. to procure an extension or a new loan for you, and if not, how did it come that [he] got an extension for you, and an additional loan for you?

Answer. I did not ask Burnham, Ormsby & Co. to procure a new loan, but I think I did ask them what an extension would cost me.

X Int. Twelve. Is it not true that you had not the money in hand to pay said Burnham loan up?

517 Answer. That is true, that I had not the money in hand.

X Int. Thirteen. Are you not a member of the bar, and have you not be- a practicing attorney for some years? State fully.

Answer. I was admitted to the bar some twenty years ago, very foolishly, I think; I never considered myself a lawyer; I never had much, and for many years have not had any practice in court.

X Int. Fourteen. Why is your deposition being taken in Chicago, Illinois, before a commissioner on interrogatories, instead of before the master at your home in Algona, Iowa?

Answer. Well, I didn't know until since I was in Chicago that my testimony was to be taken at all, and as it was impracticable for me to go home until too late to take my testimony there, so notice was given to take it here; my attorneys did not know that I was going to return to Chicago the last time until after I got there.

518

X Int. Fifteen. Do you know E. B. Soper, one of complainant's solicitors; if so, how — does he reside from Algona, Iowa?

Answer. I know Mr. Soper, and understand that he now lives at Emmettsburg, which is twenty-five miles from Algona; he may be still living at Estherville, which is fifty miles from Algona.

X Int. Sixteen. Do you know J. D. Springer, another of complainant's solicitors; and, if so, how far does he reside from Algona?

519 Answer. I do know J. D. Springer, and think he lives at Fort Dodge, which is forty miles from Algona.

X Int. Seventeen. Does George E. Clark, one of your solicitors, reside at Algona, Iowa, and was he not in partnership with you in the practice of the law several years?

Answer. George E. Clark does live at Algona, Iowa, and we were partners for two or three years at one time.

(Signed) ASA C. CALL.

Subscribed and sworn to before me, this 7th day of February, 1879.

[SEAL.] (Signed) RALPH C. RICHARDS,
Notary Public.

I, Ralph C. Richards, a notary public in and for the county of Cook and State of Illinois, do hereby certify that Asa C.

520 Call, the deponent, whose place of residence is Algona, Iowa, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, who am neither of the parties, attorney of neither, nor in anywise interested in the event of the suit, and after being carefully read over by the said deponent, the same was sworn to and subscribed by the said deponent in my presence, on the seventh day of February, A. D. 1879, between the hours of ten o'clock a. m. and five o'clock p. m. of said day, at my office, in the city of Chicago, county of Cook, and state of Illinois.

Given and certified this seventh day of February, A. D. 1879, at Chicago aforesaid, under my hand and official seal, this seventh day of February, A. D. 1879.

521 [SEAL.] (Signed) RALPH C. RICHARDS,
Notary Public, Cook Co., Ills.

Fees, $9.00, paid by plaintiff.

(Signed) R. C. RICHARDS, *N. P.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

I, E. F. C. Klokke, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Ralph C. Richards, Esq., whose name is subscribed to the certificate to the annexed deposition, was, at the time of signing the same, a notary public in and for Cook county, duly commissioned, sworn, and acting as such, and authorized to administer oaths, and take depositions; that I am well acquainted with his handwriting, and I verily believe that the signature to said certificate is genuine. In

522 testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at the city of Chicago, in said county, this 7th day of February, 1879.

[SEAL.] (Signed) E. F. C. KLOKKE, *Clerk.*

(Endorsed:) U. S. circuit court, Dist. of Ia. Henry H. Palmer *vs.* Asa C. Call *et al.* Depo. of A. C. Call. Opened and filed May 14, 1879. E. R. Mason, clerk.

523 And on the 29th day of March, 1882, a satisfaction of decree was filed in said cause, which said satisfaction is in the words and figures following, to wit:

524 Know all men by these presents, that whereas, on the twenty-fourth day of November, A. D. 1879, Henry H. Palmer, of the city of New Brunswick, county of Middlesex, and State of New Jersey, obtained a decree in the circuit court of the United States, district of Iowa, against Asa C. Call, of Kossuth county, Iowa, for the sum of sixteen thousand six hundred and fifty-two and $\frac{77}{100}$ ($16,652.77) dollars, which amount includes interest, costs, and attorney fees, and decreeing the foreclosure of a certain mortgage executed by the said Call to said Palmer upon certain real estate in the counties of Kossuth and Palo Alto, State of Iowa; and whereas afterwards said mortgaged property was sold under said decree for the sum of ($15,835.00) fifteen thousand eight hundred and
525 thirty-five dollars, leaving the balance of judgment against said Call of eight hundred and seventeen and $\frac{77}{100}$ dollars ($817.77), together with interest from the twenty-first day of May, A. D. 1880, at the rate of ten per cent per annum:

Therefore, as a compromise and settlement in full for the above-mentioned balance of the said judgment, together with interest, costs, and attorney fees, I, the said Henry H. Palmer, hereby acknowledge the receipt of the sum of ($500) five hundred dollars from said Asa C. Call, paid by the hands of Jo. Harry Call, as settlement and satisfaction in full for the above-mentioned balance of said judgment and interest as aforesaid; and I hereby release and satisfy the above said judgment, together with all claims against said Asa C. Hall.

In witness whereof, I have hereunto set my hand and seal,
526 this twenty-fifth day of March, A. D. 1882.

(Signed) HENRY H. PALMER.

STATE OF NEW JERSEY, } *ss:*
County of Middlesex, }

On this twenty-fifth day of March, 1882, before me, a notary public within and for said county, personally came Henry H. Palmer, personally to me known to be the identical person who executed the foregoing instrument, and he acknowledged the execution of the same to be his voluntary act and deed.

[SEAL.] (Signed) LOUIS APPLEGATE,
Notary Public within and for said County.

(Endorsed:) Henry H. Palmer *vs.* Asa C. Call. Satisfaction piece. Filed Mar. 29, 1882. E. R. Mason, clerk.

527 And on the 14th day of October, 1879, an opinion was filed in said cause, which said opinion is in the words and figures following, to wit:

528 Circuit Court U. S. Dist. of Iowa.

HENRY H. PALMER *vs.* ASA C. CALL. } No. 969. Chancery.

This is a suit to foreclose a mortgage.

The only defense is usury. The note secured by the mortgage was for the sum of $11,000.00, executed by the defendant to the complainant at Emmetsburg, Iowa, on the first day of November, 1875, payable with interest at 10 per cent. semi-annually on the 1st day of November, 1880, with a stipulation that if default should be made in the payment of interest the whole should at the election of the holder become due, &c.

It appears that Mrs. Maggie P. Davison, of Cook county, Illinois, placed in the hands of one A. C. Burnham, also living in that State, the sum of $10,000.00, authorizing him to loan the same for
529 her on real estate security. Said Burnham was a member of the firm of Burnham, Ormsby & Co., bankers of Emmetsburgh, Iowa. Asa C. Call, the defendant, had applied to that firm to obtain a loan for him. Shortly after the application was made Call met A. C. Burnham in Iowa, and they entered upon a negotiation for the loan. The result was that Call gave his note to Burnham for ten thousand dollars, with semi-annual interest notes of $500 each, and received through the house of Burnham, Ormsby & Co. the sum of eight thousand dollars, that firm retaining $2,000.00 as bonus or commissions out of the ten thousand dollars. The money loaned belonged to Mrs. Davison, but that fact was not disclosed to Mr. Call, and the notes were taken in the name of A. C. Burnham. The note remained in the custody of A. C. Burnham, subject to the control of Mrs. Davison, and were recognized
530 by Burnham as her property. She received the interest, and was wholly ignorant of the fact that Mr. Call received any less sum than $10,000.00. She gave no authority to Burnham to loan the money at a greater rate of interest than ten per cent. per annum or to take any bonus out of the sum loaned. She received no benefit from the usury, and had no knowledge whatever of it.

The plaintiff, Henry H. Palmer, a capitalist residing in New Jersey, purchased the said $10,000 dollar note, with five coupon notes attached, from A. C. Burnham, who endorsed it to him in September, 1873, paying for the same the full face value of ten thousand dollars in cash.

The interest had been paid at maturity up to the time of purchase, and the plaintiff had no notice of the usury in the original loan on which the notes were given.

531 The plaintiff did all the business in connection with the notes and mortgage through the house of Burnham, Ormsby & Co.

He never saw the defendant nor did any business with him in person. The plaintiff placed the notes in the hands of Burnham, Ormsby & Co. for collection of interest and reloan to Mr. Call.

The interest notes were paid at maturity to the plaintiff, until November, 1875, when one of the coupon notes for $500.00 being due the defendants, at the instance and request of Burnham, Ormsby & Co., entered into a new contract for the extension of the loan, by which he gave the plaintiff the said note for $11,000.00.

The plaintiff advanced & paid the sum of $1,000 in cash, and surrendered the $10,000 note to the defendant.

It seems that Burnham, Ormsby & Co. applied $500 of the cash payment to the payment of the coupon note then due, and
532 without the knowledge of the plaintiff retained $500 as a bonus for effecting the new loan.

The plaintiff did not authorize the retention of the $500 bonus by Burnham, Ormsby & Co., received no benefit from it, and in fact had no notice of it, when he received the $11,000.00 dollar note and mortgage.

For the plaintiff, O'Connel & Springer, & Crawford & Soper.

For the defendant, George E. Clarke, Hubbard & Clarke, & Wright, Gatch & Wright.

533 It is well settled that to make a loan usurious there must be an intent on the part of the lender to take more than the legal rate of interest.

Tyler on Usury, 103. Condit *vs.* Baldwin, 21 N. Y., 219. Loyd *vs.* Scott, 4th Peters, 205. U. S. Bank *vs.* Waggoner, 9 Peters, 309. Jones *vs.* Berryhill, 25 Iowa, 289.

Doubtless in general the intent of an agent acting within the scope of his authority may be imputed to the principal.

But it is settled beyond question that if an agent in good faith makes a loan for another and without the knowledge or authority of his principal, and for the agent's own benefit exacts more than legal interest, the loan is not thereby rendered usurious. In such case the law does not impute the knowledge and the intent of the agent to the principal. This doctrine is supported by
534 numerous authorities both in England and this country.

Tyler on Usury, 156 to 172; Dagnel *vs.* Wigley, 11 East., 43; Salarteen Melville, 7 Barn. & Cres., 427; Coster *vs.* Dilworth, 8 Carven, 299; Condit *vs.* Baldwin, 21 N. Y., 219; Smith *vs.* Marvin, 27 N. Y., 137; Bell *vs.* Day, 32 N. Y., 165; Baxter *vs.* Buck, 10 Vert., 548; Muir *vs.* Newark Ins., 16 New Jersey Eq., 537; Conover *vs.* Van Mater, 18 N. Y. Eq., 486; Rogers *vs.* Buckingham, 33 Conn., 81; Hopkins *vs.* Baker, 2 P. H. Va., 110; Gokey *vs.* Knapp, 44 Iowa, 32; Wyllis *vs.* Ault, 45 Iowa, 46.

The result summed up in 17 Albany Law Journal, 119; Barrett *vs.* Snowden, 5 Wendl., 181.

I have the greatest confidence in the correctness and stability of

this rule, from the fact that it rests upon solid foundations of reason and justice.

The lender employs an agent to loan his money. He gives the agent no authority to violate the law. He has no knowledge of the fact that usurious interest is extorted.

535 He has no intent to receive, and does not receive, more than the law allows. He derives no benefit from the illegal transaction. But the agent and borrower, without the knowledge, consent, or authority of the lender, enters into an illegal contract for the payment of excessive interest.

The borrower and agent are the guilty parties. They knowingly violate the law. They are *particeps criminis*, though it may be in unequal degrees. They knowingly put the lender's money in jeopardy without intending the least pecuniary advantage to him.

It is the lender who is prejudiced and influenced by such a transaction. Would it not be most unjust to inflict pecuniary loss upon the lender who is without fault, and free from any illegal intention in favor of a party who has knowingly and wilfully participated in the violation of the law?

Would it be consistent with sound morality so to do?

536 What right has the *the* borrower to assume or to believe that the lender's agent is authorized by his principal to violate the law by the taking of usurious interest?

The lender's agent is either a special or a general agent. If he is specially empowered to negotiate the particular loan, and no other, it is the legal duty of the borrower to look to the special authority, and the principal is not bound beyond the special authority.

If he is a general loan agent the limitation is that he must keep within the usual and ordinary scope of the business committed to him. The borrower must determine the extent of the authority by considering what is the usual and ordinary course of that business. Is it within the usual and ordinary course for an agent to take excessive interest in violation of the law?

Such a practice is extraordinary.

537 It is without the usual course of business. The natural and proper inference for the borrower to draw from the fact of the agent's proposing to take illegal interest would be that in so doing he would be acting without the authority of his principal. It may be said that the principal is responsible for the frauds of his agent in the course of the business committed to him, even though the principal should be ignorant of the fraudulent acts, or should expressly prohibit them. Very true; but in this case there are two innocent parties, the principal and the party defrauded.

One of the two must needs suffer from the fraudulent acts of the agent, and it is the dictate of reason and justice that where one or the other of these innocent parties must suffer, the loss should fall upon him who put it in the power of the agent to commit the fraud, rather than him who had no lot nor part in choosing the agent or

538 placing him in a position to do the mischief.

But in the case of usury, contracted for through an agent, the borrower is not innocent.

He participates knowingly in the violation of the law. He has no merit to plead in his defense, while the lender, in the absence of authority given by him, or knowledge of the violation of the law, is wholly innocent and entirely free from moral guilt.

Indeed, it smacks strongly of fraud in the borrower to enter into a contract with the lender's agent to pay usurious interest without any inquiry whatever into the authority of the agent to make an unlawful contract which the borrower knows cannot be enforced, for in this way the borrower, in connivance with the agent, gets the lender's money with the intent demonstrated by his subsequent plea of usury to avoid the fulfilment of his contract.

539 Now, if the principle thus stated, which is so just in itself and so firmly supported by authority, be sound law, it is decisive of the present case.

For it is evident that neither Mrs. Davison nor the plaintiff had any knowledge whatever of the retention by Burnham, Ormsby & Co. of the respective bonuses of $2,000 and $500.00.

They did not authorize the usury. They received no benefit from it. They paid the full sums for which they respectively received the defendant's notes.

If, therefore, it be granted as a fact that A. C. Burnham was Mrs. Davison's agent in making the original loan, and that Burnham, Ormsby & Co. were the plaintiff's agents in negotiating the second loan, it would make no difference in the decision of the question in this case.

The plea of usury must still be overruled.

I cannot assent to the proposition of defendant's counsel,

540 that in the original transaction A. C. Burnham was the lender of the money because he failed to disclose his principal and took the notes in his own name.

The money belonged to Mrs. Davison; A. C. Burnham was her agent in making the loan of it.

They both treated the notes as the property of Mrs. Davison, and she received the interest upon them. A. C. Burnham had in fact no real interest in the loan, except as trustee for Mrs. Davison. He would have lost nothing if a plea of usury had been sustained.

The penalties would have fallen upon Mrs. Davison, and it is therefore her intentions and her acts, not the acts and intentions of A. C. Burnham, that are to be considered in determining whether or not the penalties of usury shall be inflicted.

The act of an agent in taking notes upon a loan of his principal's money in his own name does not make the agent the lender.

541 But even if we grant the proposition that A. C. Burnham was in fact the lender, it will not avail the defendant in this case, for it is a legal proposition well settled in our jurisprudence by the most respectable authorities, that where a usurious obligation passed for value to an innocent purchaser without notice of the usury, and where the innocent assignee takes a new and substituted security for the debt, there being no taint of usury in the second transaction, the plea of usury to the substituted obligation

cannot be sustained. So long as the usurious contract remains in the hands of the original party to it, no change in the form of the security will have any effect to purge it of the taint of usury, but when it has passed for value into the hands of an innocent assignee the rule is different.

Ellis *vs.* Warner, Moor 750.
Cuthbert *vs.* Haley, 8 Term R., 399.
542 Powell *vs.* Waters, 8 Cowen, 669.
Kent *vs.* Walton, 7 Wend'l, 257.
Dix *vs.* Van Weych, 2 Hill N. Y., 522.
Smedburg *vs.* Simpson, 2 Sandf., 87.
Smedburg *v.* Whittlesey, 3 San. Chy., 323.
Smalleys *vs.* Daugherty, 3 Bosworth, 66.
Houghton *vs.* Payne, 26 Conn., 396.
Brown *vs.* Waters, 2 Md. Ch'y Cases, 209.
Bearce *vs.* Barstow, 9 Mass., 44.
Campbell *vs.* McHarg, 9 Iowa, 357.
Wendlebone *vs.*Parks, 18 Iowa, 544.

It is needless to say that the present case is clearly within this principle.

The plaintiff was an innocent purchaser of the original notes for value.

He not only took a new and substituted security, but the new obligation was founded upon additional considerations—the extention of time and the advance of a further sum of money.

There was no usury in the second loan which could, as we have shown, affect him.

543 The argument of counsel, that the true construction of sections 2079 & 2081 of the code is repugnant to principle that a new and substituted security in the hands of an innocent assignee avoids the usury, is, to my mind, plausible, but inconclusive. These provisions have not yet been construed as applicate to such a security, and I think it is quite unnecessary so to construe them. The provision of sec. 2081 is that nothing in the statute shall be construed—

"To prevent the proper assignee, in good faith, and without notice of any usurious contract, from recovering against the usurer the full amount of the consideration paid by him for such contract, less the amount of the principal money."

544 It seems to me that this provision was merely intended to give the assignee, without notice, a remedy, where he had none before; that is, where he stood upon the original usurious contract, without any new security. In most cases we may assume that the debtor would not execute to the innocent assignee a new security for the usurious debt, and in all such cases the innocent holder could recover from the debtor only the "principal money."

The statute comes to his relief by giving him a right to recover against the usurer the full amount of the consideration paid by him for such contract, less the amount of the principal money. It is a wholly different case where the debtor himself gives to the innocent

assignee, who pays full value and takes no usury, a new and substituted obligation, especially where such obligation is founded upon some new and sufficient consideration.

In this case the assignee would have a sufficient remedy
545 against the debtor upon the new contract by the principle of the common law to which I have adverted, and therefore the provision of the statute would be inapplicable to his case, and unnecessary to his protection.

As to the words of the section relied upon by counsel to support their construction, that "no person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum or value, for the loan of money," than 10 per cent., they are sufficiently answered by the fact that the innocent assignee does not receive more than 10 per cent. on the sum by him advanced. If he does receive more, his new contract, in its terms, becomes usurious, and subject to the penalties of the statute.

It is my opinion that it was not the purpose of the Legislature to make our statute of usury apply at all to negotiable bills and
546 notes in the hands of the *bona fide* holder. It would certainly be a most seriously obstruction to the free circulation of commercial paper to subject it to the law of usury. Can it be that our Legislature intended that every one in money transactions before receiving a bill or note under due should stop to inquire whether or not it has upon it the taint of usury? I think not. It has long been the settled law that where a statute by its terms makes a note or bill absolutely void, the instrument is invalid in the hands of a *bona fide* holder for value. But where a statute declares a contract illegal but only voidable, a negotiable note or bill founded upon such voidable contract is good in the hands of a *bona fide* holder.

This doctrine has been applied by the courts to statutes of usury as well as other penal statutes.

Now, our statute does not make a usurious contract void.
547 Indeed, such a contract is only voidable as to the excess of interest. Did our Legislature intend in this respect to overturn one of the great principles governing commercial paper in this and other countries?

It is noticeable that the Legislature does not in the sections just referred to use terms appropriate to commercial paper.

The language is that the proper "assignee," not indorsee, shall be entitled to the remedy over against the usurer.

In strict legal parlance we do not use the term assignee when we mean to designate the indorsees of bills and notes.

I am, therefore, inclined to think that the Legislature in using the term assignee did not mean to provide for innocent indorsees of mercantile paper who were already amply protected by the law merchant, but for that large class of assignees who in the ab-
548 sence of such a provision would step into the shoes of their assignors with just the same rights, remedies, and equities to which their assignors are entitled and none other.

Judgment for the comp't.

(Endorsed:) Palmer *vs.* Call *et al.* Opinion. Filed Oct. —. E. R. Mason, clerk.

548½ STATE OF MINNESOTA, } *ss:*
County of Hennepin, }

By the direction of the attorney of the within-named Asa C. Call I have served the within citation upon J. D. Springer, att'y-at-law, as the attorney of record in said cause of said Henry H. Palmer, by reading said citation to him, and also giving him in hand a copy thereof, this 21st day of September, A. D. 1882, at his office in the city of Minneapolis, Hennepin county, State of Minnesota.

J. W. HENION,
Deputy Sheriff.

Fees.

Service	$1 00
Mileage	60
Notary fees	25
Stamps	15
	$2 00

Subscribed and sworn to before me, this 21st day of September, 1882.

JAMES E. MERRITT, [SEAL.]
Notary Public, Hennepin County, Minnesota.

549 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Henry H. Palmer:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the district of Iowa, wherein Asa C. Call is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. M. Love, this 22nd day of August, 1882.

J. M. LOVE, *Judge.*

Service of the within citation is hereby acknowledged by the receipt in hand of a copy thereof, this 5th day of Sept., 1882.

——— ———,
Pl'ff's Att'y of Record.

[Endorsed:] Filed Sep. 23, 1882. E. R. Mason, clerk.

550 United States Circuit Court, Central Division, District of Iowa.

I, E. R. Mason, clerk of said court, do hereby certify that the foregoing transcript contains a full, true, and complete copies of all

the pleadings, proceedings, and record entries in a certain cause in said court, wherein Henry H. Palmer was complainant and Asa C. Call was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Des Moines, in said district, this 24th day of September, 1882, and of the Independence of the United States the 107th year.

[SEAL.] EDWARD R. MASON,
Clerk U. S. Circuit Court, Central Division, District of Iowa.

Endorsed on cover: Iowa C. C. U. S. No. 334. Asa C. Call, appellant, *vs.* Henry H. Palmer. Filed 9th October, 1882.

116-98

UNITED STATES OF AMERICA.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1882.

ASA C. CALL, APPELLANT, *vs.* HENRY C. PALMER, APPELLEE.	}	Equity. No. 1,009.

Comes now Asa C. Call, appellant in the above-entitled cause, by his attorney, Jo. H. Call, and respectfully shows unto this Honorable Court:

That this cause was removed from the state courts of the State of Iowa to the Circuit Court of the United States for the District of Iowa, under the act of March 3d, 1875, "to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the state courts, and for other purposes," and is brought to this Honorable Court on appeal from the decree rendered in said cause by the Honorable Judge McCrary, Judge of said United States Circuit Court for the District of Iowa.

Wherefore said appellant, by his said attorney, moves this Honorable Court to advance said cause, under the provisions of Rule 32, and of subdivision 4 thereof, of this Honorable Court.

JO. H. CALL,
Attorney for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

ASA C. CALL, *Appellant*,
vs.
HENRY H. PALMER.

No. 334.

Appeal from the Circuit Court of the United States for the District of Iowa.

Your petitioner, Asa C. Call, appellant in the above entitled cause, moves this honorable court that a writ of *certiorari* may be issued for diminution of the record of said cause, and directed to E. R. Mason, clerk of the circuit court of the United States, southern district of Iowa, central division, and commanding him to certify up to this honorable court the balance of the record in said cause as follows, viz.:

One note of Asa C. Call to A. C. Burnham, for $10,000.00, dated November 1, 1872, and due November 1, 1885, and five coupon interest notes of the same, being of the same date and for $500.00 each, together with the endorsements and writing on the back of said note and coupons.

And for grounds hereof, your petitioner respectfully shows this honorable court—

That said evidence is material, and was introduced in evidence on the trial of this cause in the circuit court by your petitioner, and is a part of the record of said cause in said court.

That on the 9th day of October, 1882, your petitioner filed in this court what he supposed was a complete transcript of the record in this case, together with the certificate of the clerk of said United States circuit court, district of Iowa, that said transcript contained a full, true and complete record in said cause.

That your petitioner relied upon said certificate, and has just received the printed record, and now learned for the first time, this 17th of December, 1884, that the printed record in this cause does not contain the evidence above set forth, the same having been omitted by the said clerk by mistake.

Wherefore your petitioner prays that said writ of *certiorari* may be issued for the diminution of said record.

ASA C. CALL.
By J. H. CALL,
His Attorney.

STATE OF IOWA, }
POLK COUNTY. }

J. H. Call, being first duly sworn, on oath says: That he is the attorney for Asa C. Call in the above entitled cause; that he has read the foregoing motion for writ of *certiorari*, and is acquainted of his own knowledge with the facts therein stated, and that the same are true.

Subscribed in my presence and sworn to before me by said J. H. Call, this —— day of December, 1884.

11698

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 334.

ASA C. CALL, APPELLANT, *vs.* HENRY H. PALMER.

Writ of Certiorari and Return.

FILED FEBRUARY 2, 1885.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court of the United States for the southern district of Iowa, Greeting:

Whereas in a certain suit in the circuit court of the United States for the district of Iowa, between Henry H. Palmer, complainant, and Asa C. Call, defendant, which suit was removed to the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"One note of Asa C. Call to A. C. Burnham, for $10,000.00, dated November 1, 1872, and due November 1, 1875, and five coupon interest notes of the same, being of the same date, and for $500.00 each, together with the endorsements and writing on the back of said note and coupons:"

2 You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find, to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 23d day of January, A. D. 1885.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

3 $10,000. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of November, A. D. 1875, for value received, I promise to pay to the order of A. C. Burnham the principal sum of ten thousand dollars, with interest thereon at the rate of ten per cent.

per annum from Nov. 1st, 1872, until maturity, payable semi-annually, according to the tenor of six interest notes, each for five hundred dollars, bearing even date herewith, both principal and interest notes payable at the banking-house of Gilman, Son & Co., New York; and if default be made in the payment of any interest note, or any portion thereof, for the space of ten days after the same becomes due and payable, then said principal and interest notes shall, at the option of the said A. C. Burnham or his assigns, become at once due and payable without further notice.

4 It is expressly agreed and declared that these notes are made and executed under and are in all respects to be construed by the laws of the State of Iowa, and are secured by mortgage of even date herewith, duly stamped and recorded.

This note bears interest at ten per cent. after maturity.

* * * * * * *

[On the margin:] Burnham, Ormsby & Co.

(Endorsed:) The endorsement on said note is cancelled in the following manner:

(Signed)

[Every word between black lines cancelled in red ink.]

A. C. BURNHAM.

Please pay to the order of Burnham, Ormsby & Co., for reloan to same party.

(Sigred) HENRY H. PALMER.

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5 *Interest Note.*

$500. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of May, 1873, for value received, I promise to pay to the order of A. C. Burnham five hundred dollars at the banking-house of Gilman, Son & Co., N. Y., being the interest due on my principal note of $10,000, of even date herewith. This note bears interest at ten per cent. after due.

No. 1. (Signed) ASA C. CALL.
No. 3093.

[Endorsed across the face:] Paid in full, April 24, 1873.

(Endorsed:) Pay to the order of Burnham, Condit & Co. (S'g'd) A. C. Burnham.

Pay to the order of Burnham, Ormsby & Co., cashier, for collection for acc't of Burnham, Condit & Co. (S'g'd) J. B. Russell, cashier.

Paid April 24th, '73. Burnham, Ormsby & Co.

6 *Interest Note*

$500. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of November, 1873, for value received, I promise

to pay to the order of A. C. Burnham five hundred dollars, at the banking-house of Gilman, Son & Co., N. Y., being the interest due on my principal note of $10,000, of even date herewith. This note bears interest at ten per cent. after due.

No. 2. (Signed) ASA C. CALL.

[Endorsed across the face:] Paid.

(Endorsed:) A. C. Burnham. Pay to the order of Burnham, Ormsby & Co. Henry H. Palmer.

Paid Nov. 12th by note, etc. Burnham, Ormsby & Co.

7 *Interest Note.*

$500. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of May, 1874, for value received, I promise to pay to the order of A. C. Burnham five hundred dollars, at the banking-house of Gilman, Son & Co., N. Y., being the interest due on my principal note of $10,000, of even date herewith. This note bears interest at ten per cent. after due.

No. 3.

* * * * * * *

(Endorsed:) Paid in full, May 18th, 1874. Burnham, Ormsby & Co. A. C. Burnham.

* * * * * * *

Burnham, Ormsby & Co. Henry H. Palmer.

8 *Interest Note.*

$500. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of December, 1874, for value received, I promise to pay to the order of A. C. Burnham five hundred dollars, at the banking-house of Gilman, Son & Co., N. Y., being the interest due on my principal note of $10,000, of even date herewith. This note bears interest at ten per cent. after due.

No. 4.

* * * * * * *

(Endorsed:) A. C. Burnham. Pay to the order of Burnham, Ormsby & Co. Henry H. Palmer.

9 *Interest Note.*

$500. EMMETSBURG, IOWA, *November 1st*, 1872.

On the first day of November, 1875, for value received, I promise to pay to the order of A. C. Burnham five hundred dollars, at the banking-house of Gilman, Son & Co., N. Y., being the interest due on my principal note of $10,000, of even date herewith. This note bears interest at ten per cent. after due.

No. 6.

* * * * * * *

(Endorsed:) A. C. Burnham. Pay to the order of Burnham, Ormsby & Co. Henry H. Palmer.

10 United [States] Circuit Court, Southern District of Iowa, Central Division.

I, Edward R. Mason, clerk of the above-named court, pursuant to the foregoing mandate, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of one note of Asa C. Call to A. C. Burnham for ten thousand dollars, dated November 1st, 1872, and due November 1st, 1875, and five coupon interest notes of the same, being of the same date, and for five hundred dollars each, together with the endorsement and writing on the back of the said note and coupons, in a certain cause adjudicated in said court, wherein Henry H. Palmer was complainant and Asa C. Call was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Des Moines, in said district, this 29th day of January, A. D. 1885.

E. R. MASON,

[SEAL.] *Clerk U. S. Circuit Court, Southern District of Iowa, at Des Moines.*

[Endorsed:] Supreme Court U. S. 1884, October term. No. 334. Asa C. Call, appellant, *vs.* Henry H. Palmer. Writ of certiorari and return. Office Supreme Court U. S. Filed Feb. 2, 1885. James H. McKenney, clerk.

116-98

IN THE

United States Supreme Court,

OCTOBER TERM, 188 5-

NO. 67

ASA C. CALL, *Appellant*,

Against

HENRY H. PALMER.

APPEAL FROM THE UNITED STATER CIRCUIT FOR THE DISTRICT OF IOWA.

BRIEF AND ARGUMENT FOR APPELLANT.

WHITING S. CLARK,
JO. HARRY CALL, } *For Appellant.*

IN THE

United States Supreme Court.

ASA C. CALL, *Appellant*,
vs.
HENRY H. PALMER. } No. 67

Appeal from the Circuit Court of the United States for the District of Iowa.

BRIEF AND ARGUMENT FOR APPELLANT.

WHITING S. CLARK,
JO. HARRY CALL,
For Appellant.

STATEMENT.

This is a suit in equity by Palmer to foreclose a mortgage on Call's land, upon Call's note for $11,000 and interest thereon.

In November, 1872, one Burnham made the original loan of $8,000 only, to Call, at Emmettsburg, Iowa, and took Call's note for $10,000, payable in three years from date, with interest, payable semi-annually, at 10 per cent. per annum, the highest

rate allowed by law in the State of Iowa, secured by mortgage on Call's real estate in Iowa.

The sole consideration for this note of $10,000 was the sum of $8,000 only, loaned to Call by Burnham, and the enormous sum of $2,000 usury infected the original transaction.

Burnham was a partner of the firm of Burnham, Ormsby & Co., bankers, at Emmettsburg, Iowa, but made the original loan for himself, though the firm shared in the $2,000 usury.

In the fall of 1873, pending some negotiations of Call with Burnham as to the payment of interest soon to be due, Burnham transferred the note and mortgage to Palmer, a money-lender at New Brunswick, New Jersey.

In the fall of 1875, when the note came due, Call negotiated with Palmer, through Burnham, Ormsby & Co., of Emmettsburg, Iowa, acting solely as agents for Palmer, a renewal of the original note, and gave Palmer his note for $11,000, payable in five years, being the note in suit herein, with interest payable semi-annually at 10 per cent. per annum, secured by the mortgage on his lands in Iowa, for the foreclosure of which this suit was instituted.

The sole consideration for this note of $11,000 was the original note for $10,000 and $500 interest, being the last installment on the $10,000 note, and there was then the further sum of $500 usury, which became part and parcel of this note for $11,000, and infected it with this usury.

Burnham, Ormsby & Co. had been Palmer's agents for loaning money, collection of his interest and looking after his loans, for some six years prior to this renewal to Call.

One installment only of interest was paid by Call on this last note, in May, 1876.

This suit for foreclosure of the mortgage was commenced in January, 1877, after the installment of interest became due in November, 1876.

The plea of usury is interposed by Call.

Palmer disclaims any knowledge of the enormous usury exacted by his wicked agents.

It is also claimed that the original loan was money belonging to one Maggie J. Davison, though there is no pretense that this alleged fact was ever disclosed until the institution of this suit.

But Burnham loaned the money as his own and took and sold the security as his own.

The plea of usury was disallowed and decree of foreclosure entered for the complainant for the sum of $15,484.46, with interest at 10 per cent. per annum, and $500 attorneys' fees and costs.

ERROR IN THE DECREE.

The decree herein is erroneous:

1. In disallowing the plea of usury and rendering a decree in favor of Palmer for $15,484.42, with interest at 10 per cent. from November 19, 1879, and $500 attorneys' fees and costs, and decreeing the sale of the mortgaged premises to satisfy these sums.

2. Where instead, the plea of usury should have been sustained and decree rendered in favor of Palmer for only $4,950, without interest, attorneys' fees or costs, and decree for costs in favor of Call.

POINTS OF LAW AND FACT.

I.

Burnham made the original loan for himself, professedly of his own money, and took the $10,000 note and mortgage in his own name.

Record, Burnham's testimony, p. 23; Call's testimony, pp. 139, 140.

II.

Palmer is precluded from setting up the alleged ownership of Maggie J. Davison to the money in the original loan.

Story on Agency, Sections 390, 404, 419, 420, 444, 443.
Commonwealth *vs.* Frost, 5 Mass. 53.
Lime Rock Bank *vs.* Plimpton, 17 Pick 159.
Erickson *vs.* Bell, 53 Iowa, 627.
Hutchinson *vs.* Hutchinson, 46 Me. 154.

III.

The original transaction as between Burnham and Call was grossly usurious.

Record, Call's testimony, pp. 139, 140, Burnham's testimony, p. 23.

Statutes of Iowa see post - pp. 47. 48

IV.

The original note was tainted with usury the same in Palmer's hands as in Burnham's.

V.

The most that can be claimed for Palmer, as to the $10,000 note and mortgage, is that if he made the renewal and substitution without notice of the usury in the original $10,000 note, he may be protected from the usury in the original note, unless there was usury also in the renewal note. Reviewing:

Cuthbert *vs.* Haley, 8 T. R. 390.
Powers *vs.* Waters, 8 Cow. 692.
Dix *vs.* VanWyck, 2 Hill 522.
Kent *vs.* Walton, 7 Wendell 257.
Bearce *vs.* Barstow, 9 Mass. 46.
Campbell *vs.* McHaig, 9 Iowa 357.
Wendlebone *vs.* Parks, 18 Iowa 546.
Smedburg *vs.* Simpson, 2 Sanford 87.

And citing Parsons on Notes and Bills, Vol. 2, 419 and 420, and authorities there cited.

Edwards on Notes and Bills, 351.

Chapman *vs.* Black, 2 B. and A. 588, Harrison's Dig., Vol. 3, 6,480.

VI.

But under the statute of Iowa Palmer would not be protected by the renewal, though made without notice of the original usury, NOR AS AN INNOCENT HOLDER OF THE ORIGINAL NOTE. Section 2080 Code of Iowa, 1873.

Bacon *vs.* Lee, 4 Iowa 494.
Smith *vs.* Cooper, 9 Iowa 383.
Garth *vs.* Cooper, 12 Iowa 365.
Burrows *vs* Cook, 17 Iowa 441.
Erickson *vs.* Bell, 53 Iowa 627.
Mason *vs.* Searles, 56 Iowa 532.

Statutes of Iowa see post pp. 47, 48

VII.

Burnham, Ormsby & Co. were Palmer's agents in procuring the new securities.

Record, Palmer's testimony, pp. 16, 17, 118, 123; Call's testimony, pp. 142, 143, 141; letters and receipts of Burnham, Ormsby & Co., pp. 129, 130.

VIII.

And Palmer is chargeable with the knowledge of Burnham, Ormsby & Co., as to the usury in the original note.

Distilled Spirits, 11 Wall 366.

IX.

The whole doctrine of allowing the wicked agent of the innocent money-lender to exact usury for himself as a part and parcel of the transaction, as in the so-called "bonus" cases, is vicious and unsound, not sustained by the weight of authority, nor sustainable on sound legal principles.

The principal must adopt the whole or none of the transaction, but cannot enforce the contract and disclaim its usurious taint.

Reviewing cases cited by the court below, to-wit: (Record, p. 149.)

Dagnel *vs.* Wigley, 11 East 43.
Solarte *vs.* Melville, 7 B. and C. 427.
Carter *vs.* Dilworth, 8 Cow. 299.
Condit *vs.* Baldwin, 21 N. Y. 219.
Smith *vs.* Marvin, 27 N. Y. 137.
Bell *vs.* Day, 32 N. Y. 165.
Baxter *vs.* Buck, 10 Vt. 548.
Muir *vs.* Newark Ins. Co., 16 N. J. Eq 537.
Connover *vs.* Van Meter, 18 N. J. Eq. 486.
Rogers *vs.* Buckingham, 33 Conn. 81.
Hopkins *vs.* Baker, 2 P. H. Va. 110.
Gokey *vs.* Knapp, 44 Iowa 32.
Wyllis *vs.* Ault, 46 Iowa 46.
Barnett *vs.* Snowden, 5 Wend. 181.

And citing:

Condit *vs.* Baldwin, 21 N. Y. 219. (Dissenting opinion.)
Bell *vs.* Day, 32 N. Y. 186. (Dissenting opinion.)
Philo *vs.* Butterfield, 3 Neb. 256.
Cheney *vs.* White, 8 Neb. 487.
Cheney *vs.* Woodruff, 6 Neb. 151.
Cheney *vs.* Eberhart, 8 Neb. 423.
Nelson *vs.* Hurford, 11 Neb. 465.
Tyler on Usury, 170.
Albany Law Journal, Vol. 20, 484.
Cobb *vs.* Davis, 10 N. Y. 345.
Ewell *vs.* Chamberlain, 31 N. Y. 611.
Presby *vs.* Parker, 56 N. H. 409.
Eadie *vs.* Ashbaugh, 44 Iowa 519.
Farrar *vs.* Peterson, 52 Iowa 421.
Beldam *vs.* Goodell, 56 Iowa 594.
Veazie *vs.* Williams, 8 How. 134.
Stockwell *vs.* United States, 13 Wall. 548.
Story on Agency, § 250.
Hovenden on Fraud, 144, 145.

Austin *vs.* Harrington, 18 Vt. 130.

Locke *vs.* Stearns, 1 Met. 563.

Morse *vs.* Ryan, 26 Wis. 362.

National Exchange Co. *vs.* Drew, 2 McQueen (House of Lords) 103.

Bigelow *vs.* Winsor, 1 Gray 303.

Tinney v. Bradner X. 114 U.S. 3-61

The usurious intent inheres in the transaction.

Insurance Co. *vs.* Ely, 2 Cow. 175.

Fielder *vs.* Darwin, 50 N. Y. 437.

Hotel Co. *vs.* Wade, 96 U. S. 23.

2 Parsons B. and N. 412, and numerous authorities there cited.

XI.

This case is clearly distinguishable from the so-called bonus cases.

Payne *vs.* Newcomb, 100 Ill. 611.

Austin *vs.* Harrington, 28 Vt. 130.

Rogers *vs.* Buckingham, 33 Conn. 81.

McFarland *vs.* Carr, 16 Wis. 259.

Algur *vs.* Gardner, 54 N. Y. 360.

Juliand *vs.* Grant, (N. Y.) 4 Alb. L. J. 318.

XII.

There is additional usury in the new securities, which is part and parcel thereof, and the original usury is not purged. Record, Call's testimony, pp. 139, 140, 141, 142; Palmer's testimony, pp. 118, 121; complainant's bill, pp. 57, 61; Burnham, Ormsby & Co.'s letter, p. 130.

Algur *vs.* Gardner, 54 N. Y. 360.

Juliand *vs.* Grant, 4 Alb. L. J. 318.

XIII.

The enormous usury exacted, and paid by Call, $4,100.

XIV.

Decree of reversal and writ of restitution for $11,702.77. (Record, pp. 61, 67, 69 and 100.)

Section 2080, Code of Iowa, 1873.

Smith *vs.* Cooper, 9 Iowa 376.

Garth *vs.* Cooper, 12 Iowa 364.

Kurz *vs.* Holbrook, 13 Iowa 563.

Miller *vs.* Gardner, 49 Iowa 234.

Shields *vs.* Barrow, 17 How. 141.

Section 2077, par. 4, Code of Iowa, 1873.

3 Parsons on Cont., 102 (7 Ed.).

Bank of United States *vs.* Bank of Washington, 6 Pet. 17.

ARGUMENT.

I.

In November, 1872, A. A. Burnham loaned the appellant, Call, $8,000. For this consideration and none other, defendant executed his note to Burnham for $10,000, payable in three years with interest at 10 per cent. per annum, payable semi-annually. +

In order to get rid of the enormous usury covered by this transaction, it is now claimed that the money loaned belonged to Mrs. Davison, and that she did not authorize Burnham to loan at more than 10 per cent. interest and had no knowledge that he had done so.

Suppose this was so. Is the contract thereby purged of usury?

According to this theory, Mrs. Davison entrusted her money fully and absolutely to Burnham. As to third parties, dealing without notice, she vested him with the full title and ownership of the money. The defendant, at the time of the transaction, had never heard of Mrs. Davison. Burnham told the defendant the money was his. This is not denied. There is

+ Statute of Iowa see pm - pp. 47, 48

no pretense that Call was informed of any interest of Mrs. Davison in the money loaned to him. The note and mortgage of $10,000 were taken in Burnham's name. The whole transaction was, with Burnham, as principal and not as agent, and there was no suggestion or suspicion of agency.

Record, Palmer's testimony, p. 23; Call's testimony, pp. 139, 140.

II.

This being so, how could Mrs. Davison herself step in and take this contract which she had put it into Burnham's power to make as principal, and not take it subject to all its infirmities?

When a third person has thus dealt with an agent as principal it is laid down:

"That the principal will not be permitted to intercept the rights of such third person in regard to the agent; but he must take the contract *subject to all equities, in the same way as if the agent were sole principal.* Thus, for example, if the agent is the only known or supposed principal, the person dealing with him will be entitled to the same right of set off, as if the agent were the true and only principal."

Story on Agency, Sec. 420.

Again:

"If a party assumes to act as principal, being only an agent, the real principal shall not be permitted to avail himself of the benefit of the transaction without subjecting himself to the burdens which would attach to the transaction if the ostensible party were the real party in interest."

Ib. Sec. 390.

To precisely the same effect

Ib. Secs. 404, 419, 444.

"If the principal should clothe the agent, although a mere special agent, with all the apparent muniments of an absolute title to the property in himself, the principal would be bound by the acts of the latter."

Ib. 443.

Lime Rock Bank vs. Plimpton, 17 Pick. 159.

In *Erickson vs. Bell*, 53 Iowa 627,

The money was received of one D. C. Thomas, and the

note given payable to him, with no notice to the borrower that the money did not belong to Thomas. The note was tainted with usury by Thomas, which it was attempted to avoid by setting up that he was the agent in loaning the money of Lewis.

The court say (p. 629.):

"A person dealing with an agent, in regard to personal property entrusted to him by the principal, without knowledge that the property is not owned by the agent, but supposing him to be the owner thereof and the principal in the transaction, will possess the rights that he would have acquired had the transaction been with the real principal.

See Story on Agency, § 444.

This rule is applicable to the case before us. It is founded upon the plainest principles of law and justice."

And the plea of usury was sustained.

In *Hutchinson vs. Hutchinson*, 46 Me. 154

The Court say:

"When an agent takes a note for his principal, payable to himself, and then transfers it to his principal, his principal stands in the position of an original holder and the note in his hands is subject to *whatever defenses might have been made to it in the hands of the agent.*"

It is useless to waste time upon this question, because, as we have seen, if Mrs. Davison had any rights in the paper, they were identical with those of Burnham, who contracted as principal.

III.

As between Call and Burnham, how does the matter stand there?

The bill concedes that Burnham loaned Call but $8,000 on the original note and mortgage of $10,000. The allegation is that "Burnham paid over to Call in pursuance of said contract $8,000, and took his note * * * for $10,000, with 10 per cent. interest, * * * the balance of the $10,000, went to Burnham, Ormsby & Co., as commission for effecting the loan." (Record, p. 54.)

The loan, however, was negotiated by Burnham in person, and by nobody else. Call so testifies, and that no one else was

present. (Record, p. 139.). That Burnham "considered awhile and then said, 'if you will give me your note for $10,000, at 10 per cent., payable semi-annually, and due in three years, I will let you have $8,000.' He said this was his own money, and that the firm had nothing to do with it. * * * I told him I would accept his offer." (Record, p. 140.)

Now turn to Burnham's testimony, (Record, pp. 22, 23, 24 and 25) and it will be seen that he does not deny a word of this. He admits negotiating with Call in person, and that Call received but $8,000. He says the other $2,000 was received and retained by Burnham, Ormsby & Co., of which firm he was a member, and as can be seen from his own statement, the principal member. As he thus knowingly and designedly reserved $2,000 of usury, disbursed it himself, and certainly received the greater part as a member of the firm of Burnham, Ormsby & Co., there can be no doubt that there was gross and enormous usury in the original loan of $8,000, represented by the $10,000 note and mortgage.

Burnham being principal in the transaction, it was equally usurious, whether his banking firm acted as the agent of Call in negotiating the loan or not. He could not, by making himself one of Call's agents in negotiating the loan, receive the greater part, or any part of the $2,000. in addition to 10 per cent. interest, without thereby making the loan usurious. We may anticipate that usury will always be cloaked by some device, but it would be hard to invent a more transparent one than this.

IV.

Let it be conceded now that Palmer purcha ed the $10,000 note with no notice of the usury in it. It needs no citation of authorities that the note was not thereby purged of the usury. The illegal taint was the same in the hands of Palmer as in the hands of Burnham, of whom he purchased.

V.

Did the substitution of the new securities purge the original usury?

The leading case on this question is *Cuthbert vs. Haley*, 8 Term Rep. 390. That case was put upon the express ground that the plaintffs who purchased the usurious notes *bona fide*, had no notice of the usury when they took the substituted security on which suit was brought. The language of Kenyon, C. J., in deciding the case is clearly to the effect that if there had been notice of the usury the substituted security could not have been sustained. He says:

"But the notes were destroyed after they got into the hands of the plaintiffs, and the bond in question was given to them, *they not knowing* of the usury between Plank and the defendant. I admit that if one security be substituted by the parties for another, in order to get rid of the statute against usury, the substituted, as well as the original security, will be void."

This intent must necessarily exist whenever there is knowledge of the usury.

Powell vs. Waters, 8 Cowen, 692

Was a case of a renewal of an usurious note to a firm, only one member of whom had knowledge of the usury It was then endorsed to the members of the firm who had no knowledge of the usury. They sued the note and it was held usurious and void in their hands.

Dix vs. Van Wyck, 2 Hill, 522

Was a contest between a sheriff who had seized goods on execution, and the holder of a chattel mortgage on the same goods. It was held that the sheriff might defend his possession by showing the chattel mortgage to be usurious and void!

Kent vs. Walton, 7 Wendell, 257

Was a case where there was absolutely no evidence that the original note was usurious, and the court so decides in terms: "There was no usury in the second note, and it was not known to the officers of the bank at the time of discounting the first note, or *at any time subsequently*, that the same had been dis-

counted at a usurious rate of interest." Under these circumstances, the court of course held that the second note was not usurious. The case was decided, however, when it was held that there was no evidence of usury in the first note.

Bearce vs. Barstow, 9 Mass., 46

Was where the maker of an usurious note procured one indebted to him to give a new note for the sum due on the usurious note and discharged the debtor in consideration of such new note. With this new note the usurious note was taken up. It was held that there was no usury as to the maker of the new note, who received in the discharge of his debt, the full amount of his note.

Campbell vs. McHaig, 9 Iowa, 357

Was where suit was on the original note. There had been no substitution. It was held that a plea of usury was good against a *bona fide* purchaser who bought without knowledge of the usury.

Wendlebone vs. Parks, 18 Iowa, 546

Was where the maker of an usurious note and mortgage, borrowed the full amount thereof of a third party to pay the same, and caused the note and mortgage to be transferred to such third party as security for the money borrowed of him. It was treated very justly as though it were a new security given for money borrowed to pay the usurious debt, and held not to be vulnerable to a plea of usury. There was no question of the substitution of new securities for the old.

It is idle to claim that these cases are authorities which sustain the proposition that the original usury would be purged by the substitution, it Palmer was chargeable with notice of it when the renewal was made. Not one of them involve that principle either directly or indirectly. In some of them there is language which recognizes the doctrine as laid down in *Cuthbert vs. Haley*, 8 Term Rep., 390, but none of them go further, and as shown by the statement of what the cases involve which

will be found to be perfectly accurate, even those which do this are *dicta* pure and simple.

The only case cited below which can be claimed holds that one who purchases an usurious note *bona fide* and after learning of the usury takes a new note, will thereby be protected from a plea of usury is *Smedburg vs. Simpson*, 2 Sanford, 87. This is a decision of a Superior Court merely, and is entitled to no consideration as a precedent.

It is contrary to the otherwise unanimous current of authorities.

If the assignee give up the usurious note, and take another *without knowledge of the usury*, the substituted security is valid.

2 Pars. N. and B., 419, and authorities there cited.

A renewal between the original parties *or others cognizant of the usury*, is in like manner usurious.

2 Pars. N. and B., 420.

Edwards, B. and N., 351, and authorities there cited.

Cuthbert vs. Haley,, *Supra.*

Chapman vs. Black, 2 B. and A., 588.

Smedburg vs. Simpson is not only contrary to authority, but unsound in principle.

Why should one who takes a new security with knowledge that it covers an usurious contract be protected? It is said by the learned counsel on the other side, to be on the ground of ratification. This will do if he ratifies with a party who has no knowledge of the usury, and is misled by his ratification into giving further time for the payment of the debt. But if he knows, it is simply a case where *both* parties seek to ratify and sanction usury, and can no more be upheld than the original transaction where the debtor also ratifies the usury so far as he can do it. Nor can the debtor be held by the new security when the holder has notice of the usury when he takes it, on the ground of estoppel. The very essence of an estoppel *in pais* or by conduct is that the party claiming the benefit of the estoppel

has proceeded in ignorance of the fact, and that the party estopped has remained silent when he should have spoken, and therefore shall not be permitted to show the fact against one who has been thereby misled. No case of estoppel by conduct can be found in the books where both parties had notice or knowledge of the real facts at the time they acted.

In *Chapman vs. Black*, 2 B. and A., 588

This precise question was involved. A bill of exchange affected with usury *being in the hands of an innocent holder*, the latter *on being informed of the usury*, takes a fresh bill in lieu of it, drawn by one of the parties to the original usury and accepted by a third person for the accommodation of the other party. *Held* that he cannot maintain an action against the acceptor of this substituted bill.

The most that can be claimed for Palmer then is, that if he took the new securities without notice of the usury in the original, he is thereby protected from the original usury, unless there was also usury in the renewal note.

VI.

Whether this can be said under the statute of Iowa is very doubtful. The authorities cited are all under statutes which declared the usurious contract void, that is, of course, voidable at the election of the victim of the usurer. Under such statutes there are no rights but those of the debtor to be affected by ratification of the contract in the hands of an innocent holder, hence he may ratify as to one having no notice, if he will, and having done so, will not be allowed to disaffirm such ratification.

But the statute of Iowa gives the State a right in the usurious contract. It provides :

"If it shall be ascertained in *any suit*, brought on *any contract*," that usurious interest has been contracted for, "the *plaintiff* shall have judgment for the principal sum without interest or costs. * * * In *no case* where unlawful interest is contracted for shall the *plaintiff* have judgment for more than the

principal sum." It provides that the State of Iowa for the use of the school fund shall have judgment for interest at 10 per cent. on the amount of the contract, whether the suit is contested or not.

Under this statute it has been held that the word "contract" refers to the *original agreement or contract* in which the debtor stipulated to pay usurious interest, and not to the note or written evidence of that contract.

Smith et al. vs. Cooper et al., 9 Iowa, 383, top.

That the substitution of one note for another does not purge the taint in the *original contract.*

Garth vs. Cooper et al., 12 Iowa, 365.

Burrows et al. vs. Cook et al., 17 Iowa, 441.

In the last case it is said:

"If the *consideration* of a claim is infected with usury, the *taint* follows it in all the mutations through which it may pass from or through the usurer, either in the description of the paper which may be given to *evidence* the same, *or the individuals who may be made new parties thereto.*"

Thus it is clear that the statute of Iowa acts upon the *original contract or consideration*, without reference to the *form* which that contract may subsequently assume, or the writings by which it is evidenced.

Furthermore it acts in "*any suit*"—"*in no case* shall the plaintiff have judgment for more than the principal sum." It makes no difference who the plaintiff is, or what his connection with the original transaction may be. All plaintiffs are alike included. And a subsequent section gives an assignee in good faith, without notice of any usurious contract, a right of action against the usurer to recover the full consideration paid for such contract less the amount of the principal money which he may recover from the debtor.

Can the provisions of this statute be abrogated by taking a new evidence of the usurious contract either with or without notice of the usury? Such a theory seems to be repugnant to the letter and spirit of the statute, and also to the provision which affords relief by an action against the usurer.

We think the Supreme Court of Iowa have covered the

question by a construction of the statutes in the cases cited, and especially in the following cases:

In *Bacon vs. Lee et al.*, 4 Iowa, 494

The court say on the construction of this statute:

"The statute does not expressly declare that the contract shall be wholly void. *But the same end is reached and the same effect is given to its* provisions, by declaring that *in no case* where unlawful interest shall be contracted for shall the PLAINTIFF in a suit brought upon the contract. have judgment for more than the principal sum loaned. We are of opinion that this provision extends to the note EVEN IN THE HANDS OF AN INNOCENT HOLDER, and we are strengthened in this conclusion by the language of the subsequent section, which provides that the proper *bona fide* assignee of any amount of the consideration paid by him for such contract deducting the amount of the judgment for the principal sum recovered against the makers."

Here is a clear and far-reaching construction of this statute by the Supreme Court of Iowa, which has never since been questioned, but has been repeatedly cited and affirmed.

Campbell vs. McHaig, 9 Iowa, 357.
Nichols vs. Lewis, 15 Iowa, 369.
French vs. Rowe, 15 Iowa, 576.
Dively vs. Cedar Rapids, 21 Iowa, 569.

And under a well settled rule will be held conclusive as to the construction of the statute in this court.

In *Garth vs Cooper*, 12 Iowa, 365,

The court say:

"The substitution of one contract for another, the taking a new note for the old one, will not purge it."

In *Mason vs. Searles*, 56 Iowa, 532,

The defendant claimed that the original note to one Vorce, tainted with usury, was renewed in the hands of the plaintiff. The court say (p. 534):

"It was competent OF COURSE for the defendants to show if they could

that in the execution of the new notes they did not in fact make a new loan from the plaintiff, but procured an extension of the old one from Vorce."

There is no pretense of any new loan in this case from Palmer. It was confessedly an extension, both by the plaintiff's pleadings and proof.

In *Erickson vs. Bell*, 53 Iowa, 627,

Where the original note was tainted with usury and the second note was given to another party who held the first, the court say:

"The court (below) correctly instructed the jury that if the two notes were separate transactions the last one was not subject to the usury paid on the first, BUT IF THE LAST ONE WAS A CONTINUATION OF THE ORIGINAL TRANSACTION, A RENEWAL OF THE FIRST, IT WAS USURIOUS."

That is just the case here. The note in suit is a renewal of the first, which was usurious, and under the statute of Iowa the note in suit should be held usurious.

It is confidently submitted that *Cuthbert vs. Haley*, and like cases and authorities, are not applicable to the statute of Iowa, and that the principle established by these cases cannot be permitted to modify or contravene the plain terms of the statute and its construction by the Supreme Court of Iowa. The plaintiff has his remedy against the usurer, Burnham, and should be remitted to that.

If the court shall hold against defendant on this proposition, the securities sued on are not purged of the usury in the Burnham note and mortgage, because

1. Palmer took the new securities with notice of the original usury.

2. There is additional usury in the new securities.

We will turn to these propositions.

VII.

Burnham, Ormsby & Co. were Palmer's agents in procuring the new securities. This was tacitly conceded in the opinion by the learned judge in the court below. There is abundant evidence of this—there is no evidence that they were in any

sense the agents of Call. The old note was endorsed to them by Palmer, as follows:

"Please pay to Burnham, Ormsby & Co., *for re-loan to the same party.*" (Sup. Record, p. 2.)

Did Palmer endorse this note to them and entrust it to them as his own agents, or as the agents of Call? That he did the latter is preposterous.

All the interest notes attached to the $10,000 note, when Palmer bought it, were endorsed by him to Burnham, Ormsby & Co., and by them collected and remitted. (Sup. Record, pp. 2, 3, and Palmer's deposition, Record, p. 118.) Did they do this as the agent of Call?

They collected other interest notes for Palmer. (Record, p. 118.) Did they do this as agent of Call?

The first interest coupon on the note in suit was endorsed by Palmer to Burnham, Ormsby & Co. They collected and remitted it to Palmer. (Record, p. 121.) Did they do this as the agent of Call?

When it became necessary to forward the note in suit for collection, Burnham endorsed it to Burnham, Ormsby & Co. (Record, p. 17.) Were they still acting for Call?

Palmer says that he sent the last $500 coupon due November 1, 1875, (old note) "to Burnham, Ormsby & Co., *together with other interest notes* to be remitted to me as my brokers, *as had been my custom for a number of years*," that is, a number of years before the date of the new note. (Record, p. 118.) He testifies, (Record, pp. 16, 17) that he has sent Burnham, Ormsby & Co. money to lend for himself and others, and that they have been his correspondents for matters of business in their locality for six years.

That they were not Call's agents for any purpose in connection with either loan, is equally clear. He so testifies in the clearest and most positive terms. (Record, Int. 6, p. 140; Ints.

11 and 12, p. 142, and Int. 15, p. 143.) In this he is wholly uncontradicted.

The applications for loans are not "powers of attorney." (Record, pp. 124, 126.) They do not employ these loan brokers, do not make them Call's agents for any purpose, do not agree to pay them for their services, have not a hint, nor an ear mark anywhere that they are addressed to the firm as agents of Call. What they do show is that they were taking every precaution to protect Burnham and Palmer, requiring not only security, but proof as to its value, a strong showing that it was ample for the amount of the notes. This was a thing very necessary for Palmer, but not at all requisite to the interests of Call. These applications and sworn statements are what *money lenders* are uniformly requiring out of abundant caution for the protection of their interests. No *borrower* ever required or desired anything of the sort.

Add to this the receipt given Call for the new securities; the third, fourth, and fifth letters (Record, pp. 129, 130) calling for interest, refusing the address of Palmer, insisting upon the payment of taxes on the mortgaged land, and there is no room for doubt that they were Palmer's agents, not only in the substitution of securities, but in protecting his interests generally.

It is the old story. Men loan money for Eastern capitalists, scalping the borrower mercilessly. For the lender they investigate titles, incumbrances, values, and thus render him services of great value. After the loan is made, for the lender they watch the payment of taxes, promptly notifying him of any delinquencies in non-payment, and promptly warning the borrower to pay his taxes, and prodding him until he does so. For the lender they collect and remit interest. For the lender they cause to be instituted and watch foreclosures. For the lender they are always ready to come into court and swear like Jagger's witness, who, when asked

what he could swear to replied, suggestively, "In a general way, *anything*, your honor." For the lender these men invest at the highest interest, thousands, hundreds of thousands, and in some cases millions of dollars, devoting their time and energies to the business, hiring and paying clerks and assistants. The lender has transactions of great magnitude carried on for him, all of his interests protected with the necessary swearing thrown in, derives all the benefits and pays never a penny for the sharp and vigilant work which is performed for him. He is no such fool as to suppose that his funds are thus managed and controlled, kept steadily at work at a maximum interest and minimum risk for nothing. He is not idiot enough to suppose that nobody pays for services thus performed for his benefit, and from which he reaps a steady and continuous profit. He knows that the borrower pays for all, besides paying the highest interest allowed by law.

Knowing this, he sanctions and authorizes it. He as much takes, from the lender, in addition to 10 per cent., the value of the services performed for him, as though it were paid to him in cash, and he paid it over to the agent for his work. Yet he is not a usurer under a statute which prohibits him from "directly or *indirectly* receiving in money, goods, things in action, or *in any other manner* more than 10 per cent. interest!" And when a victim who has by this system been scalped and bled with a ferocious greed and rapacity which would put Shylock to the blush, is finally driven to seek the protection of the courts, Mr. Money Lender, who has devised this system and profited by it, comes with the innocence and guilelessness of a very seraph, and swears that he has not authorized the bonus business and knows nothing of it. Their methods are a matter of common notoriety. Everybody understands and comprehends the matter but the courts. Will the courts be gulled, and foster their evil practices, by declaring these vampires agents of the borrower, and by holding that this transparent sham and swin-

dle of exacting a bonus is not usury because not *in terms* authorized by the lender? Will the courts accept with unhesitating and unquestioning credulity the testimony of the lender, which is in effect, that he did not know this agent and did not authorize him to get pay for his time, skill, labor and responsibility in the management of important transactions, involving immense sums of money? Will the courts believe that the lender did not know what everybody else knew, what is as patent as the noon-day sun, and what the lender *must have known* from the very nature of the transaction, or he is the veriest fool and dolt in existence? Or will the courts look at the transaction itself, as well as at the improbable story of the lender or the loan agent, and refuse to believe that the lender did not know what was a matter of common notoriety, and what he could have failed to know only by carefully abstaining from inquiry, or by resolutely and persistently refraining from the simplest mental process? Is it too much, to apply to these men the familiar rule that they will be conclusively presumed to have had notice of what they might have learned by ordinary care, or by the simplest inquiry? Or the equally familiar rule that they cannot escape notice by abstaining from inquiry in a matter that must suggest itself to the mind of every lender who has his business transacted apparently for nothing? Whenever these rules are applied will there not be an end of this form of usurious extortion and rampant cupidity?

The writer hereof has no prejudice against a capitalist as such. He does not believe that a man is an unspeakable villain because he loans money on note and mortgage and receives interest for its use. But he believes and knows from actual observation that this loan agency business is a cover for the most villainous extortions and exactions; a device which has enabled mercenary greed, in defiance of usury laws, to plunder worthy and honest men. He firmly believes that the courts have never before stood powerless and helpless in the presence

of a palpable sham and monstrous iniquity, and he does not believe that they will now apply a rule which originated in isolated instances of loans made by relatives or friends, to the protection of men who employ strangers to loan their money habitually, and to protect their monied interests for a series of years.

This man Palmer is no "spring chicken" in the loan business. His occupation and his testimony show this. He shows that Burnham, Ormsby & Co. had been acting for him as "his brokers" in loaning money for himself and others several years before this note in suit was given by Call. But as his *agents?* Never. That is, he paid them nothing. He talks about depositing the $1,000 which he claims went to make the note in suit $11,000, with a certain banking house in New York City to the credit of Burnham, Ormsby & Co., *as had long been his custom!* and about sending to them *as usual* the last coupon on the $10,000 note *with other interest notes* due at the same time to be collected and remitted, *as had been his custom for a number of years*, thus showing that this Call loan is not a single transaction with this firm, but one of many. The evidence is abundant that he is carrying on the loan business through this firm in the form and manner pointed out.

Whether there can be any doubt that he is chargeable with notice of the bonus exacted by them of Call in making the extension, will be discussed hereafter. That they were his agents in procuring the new securities and making the extension, can not admit of doubt.

VIII.

It follows that Palmer had notice of the usury in the original transaction when he received his new securities. The knowledge of his agents was notice to him.

It will be observed that while there is no evidence that Call dealt with anyone but Burnham in making the original loan, it is clearly shown that Burnham divided the $2,000 of usury with

the other members of his banking firm. They all had knowledge of it, and all received a share of the plunder. Their letter to Call shows this. (Record, p. 128.)

As to the question when notice to the agent is notice to the principal, this court will of course follow the rule laid down by the United States Supreme Court. It is needless to cite or discuss other authorities. The rule is, in Distilled Spirits, 11 Wall 366, clearly settled to be this: That the knowledge of the agent, whenever and however acquired, is the knowledge of the principal, provided it is present in the mind of the agent when acting for the principal, and provided further that such knowledge of the agent was not acquired in a privileged or fiduciary capacity, so that it would be unlawful to communicate it.

It cannot be doubted that knowledge and recollection of the original usurious transaction was present in the mind of Ormsby when he negotiated the new securities with Call, and received them from him for Palmer. He exacted a further bonus of $500, telling Call he wouldn't do it so cheap if it was an original transaction, but as it was only an extension he would do it for that amount. (Record, p. 143, Int. 16.) Is it within the range of possibilities that he did not then have in his mind the remarkable transaction in which the enormous sum of $2,000 had been extorted from Call on the original loan of $8,000? Manifestly not. And the same is true when he received the new securities from Call. The original transaction was only three years before. Every six months of the intervening time it had been recalled to the attention and memory of these "brokers" by the collection of an interest coupon note, which contained $100 of usurious interest. It had been before them continuously during the whole three years. That a transaction so monstrous in its original inception and so continuous in its operation, watched over all of the time by these men, could have been by any process forgotten by them is a

theory contrary to all reason and experience. There are no Lethean waters in Northwestern Iowa. If there were, loan agents would soon exhaust the supply. In the absence of such boon of oblivion, it could not more clearly appear, than from the circumstances of this case that knowledge of the original usury was present in the mind of the complainant's agent when the new securities were negotiated and taken. Such knowledge was notice to Palmer and under the authorities already discussed, even if they are applicable to the Iowa statute, which is denied, such new securities now in suit are not purged of usury.

IX.

The whole doctrine of allowing the wicked agent of the innocent money-lender to exact extortionate and enormous usury for himself as a part and parcel of the loan transaction, as in the so called bonus cases, is unsound and vicious in the extreme, not sustained by the weight of authority, nor sustainable on sound legal principles. The money lender must adopt the whole, or none of the loan transaction, but cannot enforce the loan contract and disclaim its illegal and usurious taint.

Unless this so-called bonus robbery, by which the money-lender's agent can exact any usury, however enormous, can be sustained, the decree in this case is clearly erroneous.

There was gross usury of $2,000 in the first note, of which Palmer must be held to be chargeable with notice.

There was also the usury of $500 in the second note, as part and parcel of it.

Burnham, Ormsby & Co., as we have seen, were and had been Palmer's general agents for years when they exacted the usury in the second note. Whether Palmer is chargeable with notice of the usury in the first note or not, the original usury is not purged if there was usury in the second note.

Can Palmer disclaim the usury exacted by his agents

and still enforce the note in suit with its usurious taints, *with the $500 usurious bonus in the note* AS PART AND PARCEL OF IT?

In support of the so-called bonus doctrine, the court below in its opinion cited the following cases (Record, p. 149.):

Dagnel vs. Wigley, 11 East, 43.
Solarte vs. Melville, 7 B. and C., 427.
Carter vs. Dilworth, 8 Cow., 299.
Condit vs. Baldwin, 21 N. Y., 219.
Smith vs. Marvin, 27 N. Y., 137.
Bell vs. Day, 32 N. Y., 165.
Baxter vs. Buck, 10 Vt., 548.
Muir vs. Newark Ins Co., 16 N. J., Eq. 537.
Rogers vs. Buckingham, 33 Conn., 81.
Connover vs. Van Meter, 18 N. J., Eq. 486.
Hopkins vs. Baker, 2 P. H. Va., 110.
Gokey vs. Knapp, 44 Iowa, 32.
Wyllis vs. Ault, 46 Iowa, 46.
Barnett vs. Snowden, 5 Wend., 181.

Let us see to what extent this apparent array of authorities really supports the doctrine in question.

In *Dagnel vs. Wigley*, 11 East., 43,

The broker exacting the bonus *was solely the agent of the borrower*, and the case was decided on that ground, with the implication that had he been the agent of the *lender* the transaction would have been usurous.

In *Solarte vs. Melville*, 7 B. and C., 430,

The additional commission reserved was applied to the payment of a debt of the borrower, which the party obtaining the discount of the bills felt in honor bound to pay, and the jury found that this was done in good faith and not as a cover for usury—in fact that there was no usury.

In *Hopkins vs. Baker*, 2 P. H. Va., 122,

The extra compensation above legal interest was paid to the creditor's attorney, in whose hands the notes were for

collection as compensation for his trouble in collecting the debt, and the case is in no sense in point on the question here.

Carter vs. Dilworth, 8 Cow., 43,

Don't cover or touch the question at all in any respect. The agent taking the bonus was solely the borrower's agent.

Smith vs. Marvin, 27 N. Y., 219,

Don't touch the bonus question by the lender's agent.

In *Gokey vs. Knapp*, 44 Iowa, 32,

Wyllis vs. Ault, 46 Iowa 46,

Connover vs. Van Meter, 18 N. J., Eq. 537,

The bonus was received by the borrower's agent.

In *Barnett vs. Snowden*, 5 Wend., 181,

The agent was solely the borrower's agent.

There are some other cases not cited in the court below, but none that add anything in the way of legal reasoning or discussion.

Some illustrate the utter viciousness of the doctrine, however.

For instance, in *Insurance Company vs. Kashaw*, 66 N. Y., 544, the lender's agent took the enormous usurious extortion of $3,000 out of a loan of $7,000.

The principal case in which there is any effort to ground the bonus doctrine on any legal reasoning is

Condit vs. Baldwin, 21 N. Y., 219.

Yet this case entirely fails to meet the prime difficulty involved in the question: That *adoption* of the agent's contract and its benefits, carries with it the infirmities and vices, and that an adoption cannot be limited to the part of the transaction which is beneficial.

In *Condit vs. Baldwin*, 21 N. Y., 219,

The plaintiff's agent required the defendant to pay him for himself $25 for the loan of $400 from the plaintiff, besides paying on the $400 the highest rate of interest allowed by law.

The majority of the court held that the payment of the $25

to the agent for himself did not render the note for the $400 usurious, on the ground that the plaintiff was not responsible for the usurious extortion of his wicked agent for his own benefit.

The fallacy is apparent at once in allowing a party to enforce such a contract disavowing the extortion of his agent, which was the inherent and inseparable means of making the loan for the benefit of the plaintiff at the highest rate of interest allowed by law, while the usurious extortion goes into the pocket of the wicked agent to pay him for his services to the innocent money-lender!

While the majority of the judges adopted the fallacy to protect the innocent plaintiff from his wicked agent, three judges distinguished for legal ability, Comstock, Davis and Welles, emphatically dissented. Chief Justice Comstock put on record their protest in an opinion remarkable for its vigor and sound reasoning, and which has never been met or answered in any case since.

Judge Comstock, p. 227, says:

"While the statutes of usury are in force they ought to be faithfully interpreted and administered by the court. The decision will in this case, I am apprehensive, go far to overthrow them. * * * The plaintiff loaned her money through her agent, Williams. He was wholly and exclusively her agent, *because he performed no service whatsoever for the borrower.* He performed indeed no act which is not involved in every loan. He formed the mental conclusion to accept the note of the borrower and his sureties; he accepted the note and advanced the money. There was simply a process of the mind or will, and the act of lending. Without these circumstances no loan was ever made. If $25 or any other sum beyond lawful interest can be charged the borrower in such a case, there is very little left of the laws against usury." * * *

On page 229:

"Devices of this sort never before deceived a court."

On pages 230, 231:

"The contract in question, therefore, had all the elements of usury, unless it can be saved from condemnation by the single circumstance that the agent had no authority from his principal to lend her money at a higher rate of interest than is allowed by the laws of the State. Upon this precise ground

the whole argument for the plaintiff rests. There is no evidence in the case that she authorized her money to be lent in violation of the statute; and I admit that such an authority ought not to be presumed from the mere act of the agent himself. But what I have to say on this point is, that the assumed defect in the agent's power to make just such a contract as he did make *does not alter the contract itself.* Such a circumstance cannot transform that into an innocent and valid agreement, which in its own essential nature and judged by its own terms, was usurious and void. *The agreement was the same whether we regard it as made with or without due authority.* It was a plain contract for more than seven per cent. interest, and *it does not become a different contract, although we admit that the plaintiff did not authorize it to be made just as it was in fact made.*

"*If her agent exceeded his authority and thereby subjected her to loss, she has a plain remedy against him.*

"So on the same ground she may, I do not doubt, *repudiate the contract altogether* and *demand and recover from the borrower her money* which went into his hands without her consent.

"This remedy was open to her the moment the borrower got possession of the fund in this unauthorized manner. *It is a remedy open to her now.* But such is not the theory of her action. * * * In short, she asserts the *validity* of the contract. If she fails in that she cannot recover. We have shown that it was an illegal and void contract, judged by its own nature and terms and according to every test authority known." * * *

On pages 231, 232:

"But again, how can the plaintiff divide an entire contract, as this was, into two parts, and so adopt one part while she rejects the other? If an agent contracts in excess of his authority, the principal is not bound at all and may repudiate the whole. But if he adopts a part he adopts the whole. Mr. Justice Story lays down the rule thus, and he cites many authorities to support it:

"'The principal cannot by his own mere authority ratify a transaction in part and repudiate as to the rest. He must either adopt the whole or none. And hence the general rule is declared that where a ratification is established as to a part it operates as a confirmation of the whole of that particular transaction of the agent.'

Story on Agency, § 250.

"The result of this rule is that the plaintiff, if she insists upon the contract at all, *must take it with all its vices and infirmities.* She is not permitted to say that the usury is one particular part or clause of the agreement which she disowns, and that she will take the benefit of the residue, which is innocent and lawful.

* * * "If usury can thus be eliminated from contracts, borrowers

are henceforth at the mercy of agents *to whose exactions no limits can be assigned.*"

On page 233:

"*There can be no question about an agent's authority when the principal himself insists upon the contract.* If the agent is guilty of fraud or usury, the principal must either disavow the dealing or take all the consequences. He cannot make a different contract by exscinding the vices which enter into and form a part of it. This is a difficulty which has not been overcome by argument or authority."

In the case in hand the plaintiff relentlessly pushes the enforcement of the entire note, which covers and includes the usurious extortion retained by his agent, and this subjects it to "all its vices and infirmities," "just as it was in fact made."

"There can be no question about the agent's authority when the principal himself insists upon the contract."

When this question again came before the Supreme Court, in *Bell vs. Day*, 32 N. Y., 165, "a majority of the judges were against the doctrine of *Condit vs. Baldwin*, if the principal point had been open to consideration as an original question, and two members of the court yielded to the authority of the decision in *Condit vs. Baldwin* only on the principle of *stare decisis.*"

No opinion to sustain or bolster up the doctrine of *Condit vs. Baldwin* was filed. No attempt was made to sustain so mongrel a doctrine by authority or reasoning.

But again the doctrine was thoroughly and critically tested and condemned by Judge Noah Davis, since Chief Justice, and distinguished as a jurist.

Judge Davis says, on page 172:

"A vital error of *Condit vs. Baldwin* lies in assuming that an agent can make this contract so that the bonus will belong to him and not innure to the benefit of his principal. *But that is an impossibility, both at law and in equity.* To hold the contrary is to assert that an agent, by violating his duty, can secure gains to himself greater than its performance would give him. It is a principle too well settled to be shaken, that an agent cannot so deal with the subject matter of his agency, whether within or without the scope of his authority, that the profits therefrom shall inure to himself. * * *

"To hold that a party employed to loan money for another may make it

the condition of a loan that the borrower shall pay to him a sum of money in which his employer shall have no interest, is to subvert the fundamental principles upon which the doctrines of principal and agent, trustee and *certui qu i trust* rest. It would soon overthrow all agencies if the courts were to settle that an agent could, by departing from his authority, stipulate for and hold advantages for himself. The personal gain of the agent would become the primary motive for his conduct and thus thwart the policy of the law, which has ever been to preserve his truth and faith towards his employer, by denying him all possibility of advantage, by fraud or treachery, or departure from the plain line of his business." * * *

On page 177:

"*The agreement* is, *as it is in fact made*, whether made with or without authority; neither the ignorance of the principal of its terms nor the want of authority to make them, can change its real form and substance." * * *

"It is an entire and indivisible thing, though one part has been executed by the payment of $50, and the residue remains evidenced by the note. Now is it possible that the principal can divide such a contract and enforce the security given for the loan?

"If that can be done, it must be on the ground that the loan itself was not usurious." * * *

"That is saying that a usurious premium has been taken upon a loan not usurious within the statute, which is a legal impossibility and absurdity." * * *

On page 179:

"The true question (in *Condit vs. Baldwin*) was not whether she (the plaintiff) had ratified anything, but whether, for the purpose of that suit, she could deny the authority of her agent to make the contract, while insisting upon and seeking to enforce a portion of the very contract she had made. The rule is well stated by Mr. Hovenden, thus:

"'Though an agent act gratuitously in exceeding his authority, subsequent approbation adopts his acts; and this approbation will be inferred whenever the principal avails himself of *any advantage* derived from his acts, for he will not be permitted to avow his agent's negotiation as to part, and disavow as to the residue.'

Hov. on Fraud, 144, 145, 1 Ves., Sr. 510, 1 Atk. 128.

"If her agent exceeded his authority in making the contract, the law gave her an election of remedies: To repudiate her contract and pursue her money into the hands of the party who had received it; to prosecute her agent for a violation of duty and recover such damages as she had sustained by his misconduct, or to insist upon the contract he had made, taking it as in fact made, and, of course, in that proceeding, *estopping herself from raising the question of authority*."

On page 181:

"In *Austin vs Harrington*. 18 Vt., 130, the defendant borrowed of plaintiff's agent a sum of money for which he gave his note, and *on the same occasion*, but without the knowledge of his principal, purchased a span of horses belonging to the agent, *at a price much beyond their value for the purpose of procuring the loan. The court held this to be usury*, and that the principal could not enforce the note to herself *without deducting the usury* received by the agent."

"She claims," said the court, "the benefit of the contract and is now seeking to enforce payment of the note. * * * The contract *as made by her agent* is thereby adopted and assented to; and she is and should be *subject to all the legal consequences resulting from it.*"

* * * "Let it not be understood that in throwing out these suggestions, light skirmishers, as it were, I am abandoning the "fortress and rock of my defense," the dissenting opinion in *Condit vs. Baldwin.*"

The plaintiff in this case, with the relentlessness of a veritable Shylock, insists on enforcing the security, tainted as it is with usury, for the full amount. Let him take the legal consequences.

In *Bell vs. Day*, *ante*, Judge Brown also put on record, p. 182, a vigorous dissenting opinion.

With reference to the plaintiff in such a case as *Condit vs. Baldwin*, he says, p. 183:

"He may repudiate and reject it as soon as the illegality comes to his knowledge. * * *

"He cannot, however, accept a part of it and reject another part. It is entire and incapable of separation.

"If it be plainly usurious—if it reserve to the lender a greater rate of interest than that allowed by law, it is none the less usurious because the agent had no authority to make it." * * *

"No one would doubt, I think, that if the agent himself was the party to the contract in the place of the principal, that it would plainly be usurious. It does not cease to be so because the principal is the party and not the agent. It remains the same identical contract in all its essential particulars, and usury is of its essence whichever may be the contracting party.

Suppose the note or bond taken by the agent reserves upon its face interest at a rate greater than that allowed by law, could the payee or obligee uphold or enforce it upon the argument that it was taken by an agent who exceeded his authority in regard to the rate of interest? * * *

"The same result must ensue when the illegal interest is not incorporated in the note, but exists outside of it. In such a case the action would not be

against the principal to enforce a contract made by his agent. Then the question of power, the agent's authority to bind the principal and do what he has done, would arise and become the principal issue. But it would be an action by the principal himself against another to enforce a contract made by his agent which he confesses to be usurious and illegal, but seeks notwithstanding to uphold because the vicious element was put into it without his authority.

"This, to my understanding, is an absurdity pure and simple."

And so it was thus, that the mongrel bonus doctrine in *Condit vs. Baldwin* was sent forth, misshapen, battered and banged, and in fact repudiated in *Bell vs. Day*, "as an original question," by the very court that reluctantly followed that case only on the principle of *stare decisis*.

In *Philo vs. Butterfield*, 3 Neb., 25, the court say:

"It is a settled rule of law which will not be questioned, that in all cases where a person employs another as his agent to loan money for him, and places the funds in the hands of his agent for such purposes, the principal is bound by the acts of his agent, and if the agent charges the borrower of such money unlawful interest, or even demands and receives from the borrower a bonus for such loan, and appropriates it to his own use, either with or without the knowledge of his principal, the principal is affected by the act of his agent.

"In contemplation of law the acts of the agent in such transactions are the acts of the principal, because the nature of the business which he has placed in charge of his agent furnishes the means of violating the law. In such business transactions by agency, there cannot be an agreement between the lender through his agent and the borrower, and a separate, distinct contract between the agent and the borrower, because it is in consideration of the loan that the unlawful interest or bonus is paid, and hence the whole transaction must be a single, indivisible proposition. It is but one contract only.

"It is said that in all cases in which the frauds and injuries of servants have been held to affect their employers, it appears that the employment afforded the means for committing the injury."

Dunlap's Paley's Agency, 306.

In *Cheney vs. White*, 5 Neb., 264, in applying the rule given in *Philo vs. Butterfield*, the court said it was "*a wholesome rule.*"

In *Cheney vs. Woodruff*, 6 Neb., 151, the court reaffirmed the same rule.

In *Cheney vs. Eberhart*, 8 Neb., 423, the court again reaffirms the rule, and say:

"We hold it to be a salutary rule and one that should be rigidly applied in

all proper cases, that where one who is interested with the business of loaning money exacts for its use, either directly or indirectly, by whatever shift or device, interest in excess of the rate permitted by the statute, the transaction is usurious and should be judged accordingly."

In *Tyler on Usury*, 170, the author, after commenting on the two New York cases, *Condit vs. Baldwin*, and *Bell vs. Day*, says:

"From the strength of the dissenting members and the able and well fortified opinions delivered in opposition to the conclusions arrived at in the cases, it is doubtful whether they will be readily acquiesced in by the courts of other States."

In an exhaustive review of all the authorities on the question in the 20 Albany L. J., 485, the writer closes the editorial article with the comprehensive and forcible remark on these two New York cases, that

"In our opinion nothing but the prejudice against the plea of usury would ever have caused them to be uttered, and nothing but a natural tendency to follow where others lead would ever have caused an acquiescence in them."

In *Cobb vs. Davis*, 10 N. Y., 345, the court held that the defendant became liable for the unauthorized act and fraud of his agent, "by *retaining the money*" received from his agent "after notice" of the fraud.

In *Elwell vs. Chamberlain*, 31 N. Y. 611, the plaintiff claimed to recover for the false representations of the defendant's agent, made to induce the plaintiff to buy a tract of land without the authority or knowledge of the defendant.

The court say, p. 619:

"If an agent defrauds the person he is dealing with, the principal not having authorized or participated in the wrong, may no doubt RESCIND *when he discovers the fraud*, on the terms of making complete restitution. *But so long as he* RETAINS *the benefits* of the dealing he cannot claim immunity on the ground that the fraud was committed by his agent and not by himself."

In *Presby vs. Parker*, 56 N. H., 409, the defendant had received the fruits of his agent's frauds and wished to retain, disavowing his agency for fraud.

But the court say, p. 413:

"The defendant cannot appropriate to himself the fruits of Hutchinson's (his agent's) acts *without becoming responsible for his conduct.*"

In *Locke vs. Stearns*, 1 Met, 563, Chief Justice Shaw says:

"The rule is laid down generally in a recent compilation of good authority, that though a principal is not liable criminally for the acts of his agent, yet he is civilly liable for the neglect, fraud, deceit, or other wrongful act of his agent in the course of his employment, though in fact the principal did not authorize the practice of such acts; but the wrongful acts must be committed in the course of the agent's employment."

3 Chit. on Com. and Man., 209, 210.

In *Morse vs. Ryan*, 26 Wis., 362, the court say:

"The doctrine of the law is well settled that a principal cannot accept and enjoy the benefits of a bargain made by his agent without at the same time ADOPTING the responsibilities by which the agent consummated it."

Citing:

Elwell vs. Chamberlain, 31 N. Y., 611.

* * * "I should be very much shocked,' says Lord St. Leonard, in *Nat. Exchange Co. vs. Drew*, 2 MacQueen (House of Lords), 103, 'at the law of England if I could bring myself to believe it would not reach the case of a person so availing himself of a misrepresentation of his own agent.'

"And it seems to be now conceded in England that the knowledge of the agent is the knowledge of the principal, without regard to the manner of acquiring it or the fact of its being communicated to the principal."

Citing:

Dresser vs. Norwood, 112, E. C. L., 466, 480.

In *Bigelow et al. vs. Winsor*, 1 Gray, 303, Chief Justice Shaw says:

"It seems to us that if one claims title or EXEMPTION on the ground that he personally committed no fraud because he has transacted no business, but it was all done in his behalf, and by his agents, it is a perfect answer that if the agent by whom all the business is done had such knowledge as rendered him in his mind and purpose fraudulent it rendered the transaction fraudulent, and his principal can claim nothing under it."

Citing:

Locke vs Stearns, 1 Met., 560.

To the point also, that the principal cannot adopt and enforce a note taken by his agent without adopting the whole transaction of the agent by which it was obtained:

Eadie vs. Ashbaugh, 44 Iowa, 519.

Farrar vs. Peterson, 52 Iowa, 421.

Beldam vs. Goodell, 56 Iowa, 594.

The agent says to the borrower, "You can not have this loan except at the highest legal interest and $500 bonus," and the borrower is forced to accept.

How now can the principal say, "I will adopt AND ENFORCE the note for the highest legal interest, but will not adopt the usurious bonus part of my agent's transaction?"

Numerous other authorities on this branch of the case might be cited to the same effect, but it seems needless, and we cite further only decisions of this court.

This court has in fact already emphatically adopted the sound and logical rule that the adoption of a contract made by an agent without authority must cover the whole or none; that the principal cannot hold on to the portions of a contract that are beneficiel to him and reject the inseparable accompaniments which induced the contract and which would impose liabilities.

In *Veazie vs. Williams*, 8 How. 134, an auctioneer pretended to have received bids not actually made, and thus ran the price of the property sold from $20,000, which was the last actual bid, to $40,000, of which fraud the venders had no actual knowledge.

The court, p. 153, say:

"Though no evidence is seen of fraud practiced by the respondents in person, or by their express directions, yet a fraud was evidently perpetrated by the auctioneer as agent for the respondents. * * * *And the respondents have taken and still retain the benefit of it.*"

And again, on p. 157, emphatically:

"But the test here is, was the purchaser deceived, and has the vender adopted the sale made by deception and *received the benefits of it* *For if so he takes the sale with all its burdens.*"

Wilson vs. Fuller, 3 Ad. and Ell., N. S. 68.

In *Stockwell vs. United States*, 13 Wall., 548, the plaintiff in error held the fruits and profits of his agent's wrongful and unauthorized act, while he endeavored to avoid the incident burdens and penalties by denying the agent's authority.

The court affirmed this principle, saying:

"In other words, the tortuous act of the agent is the act of his principals, if done in the course of his agency, though not directly authorized. *And this is emphatically true when the principals, as in this case, have ratified the benefit of the act.*."

In the case in hand Palmer holds and is entitled to retain the fruits and profits of his agent's transaction and at the same time disclaiming the agent's authority to require as a part and parcel an inherent and essential feature which Call was obliged to submit to in order to obtain the loan. Palmer now wants to divide and hold the benefits and avoid the burdens, but is clearly estopped from saying that the burdens are outside of his agent's authority, by a ratification arising from adoption, appropriation and retention of the benefits of the transaction.

We submit, therefore, that upon this review of the authorities and sound legal reasoning, the so-called bonus doctrine can not be maintained, but the attempt to enforce the note by Palmer in this case is an adoption of the whole transaction, and the note is grossly usurious *in itself*, as well as from the original note, of which it was a renewal.

X.

The usurious intent inheres in the transaction.

Insurance Co. vs. Ely, 2 Cow.

Fuller vs. Darwin, 50 N. Y., 437.

Hotel Co. vs. Wade, 96 U. S., 23.

2 Pars. B. and N., 412, and numerous authorities there cited.

In *Fielder vs. Darwin*, 50 N. Y., 437, the court holds, that

"The intent which is essential is not the intent to violate the statute, but to take more than the rate fixed by law."

In *Hotel Co. vs. Wade*, 96 U. S., 23, Judge Clifford covers the intent and the act, where he says:

"Profit made or loss imposed on the necessities of the borrower, whatever form, shape or disguise it may assume where the treaty is for a loan and

the capital is to be returned at all events, has always been adjudged to be so much profit taken on the loan, *and a violation of those laws which limit* the lender to a specified rate of interest."

XI.

But the cases cited which hold that it is not usury for an agent to exact a bonus from the borrower without the knowledge or consent of his principal, are not applicable here, either as to the original loan or the new securities, for two reasons.

1. All of these authorities are based upon single and isolated transactions, where nothing more was shown than that the bonus was exacted. In none of them are the circumstances such as to show that from a long course of dealing between the principal and agent, the principal must have known or might reasonably have known that the agent was exacting from borrowers payment for services rendered through a series of years for the principal.

In this case as has already been pointed out, the agents had acted for Palmer for years as to this loan and other loans, looking after his interest generally, and there is no suggestion or claim that Palmer paid them for such services. The most abject stupidity could not have supposed that they were thus acting without pay from some source. It was a part of the vicious system in common vogue, of common notoriety, and to which the court cannot shut its eyes. The effect is an authority on the part of the lender, in consideration of his interests being watched over and protected, that the agent may get pay for his services from the borrower, in addition to the 10 per cent. interest paid by the borrower. The distinction is no idle or fanciful one, as an examination of the adjudicated cases will show.

The court should find here as a fact, notwithstanding Palmer's frantic but thin denials, that he did and must necessarily have known that Burnham, Ormsby & Co. did for his benefit exact a usurious bonus for their services to him from

Call. There is no pretense anywhere that Palmer was paying them anything for their work for him.

Payne vs. Newcomb, 100 Ill., 611.

Where such *general* agency exists as is shown on the part of Burnham, Ormsby & Co. for Palmer—for five years as brokers in lending money for himself and others (Record, pp. 16 and 17), Palmer's knowledge of his agent's act in exacting this usurious bonus of $500 on the renewal loan will be presumed.

This distinction is made even by courts that favor the bonus doctrine and is clearly applicable in this case.

Austin vs. Harrington, 28 Vt., 130.
Rogers vs. Buckingham, 33 Conn., 81.
McFarland vs. Carr 16 Wis., 259.

2. Where the bonus exacted is not a *separate* contract with the agent, but is a part of the contract of loan and inseparable from it, it makes the note usurious. This is true even if the exaction is not included in the note itself, but where it is a part of the note, merely so much added to the amount of the loan or debt, a *fortiori*, the taint of usury cannot be escaped.

This distinction is recognized and enforced in *Algur vs. Gardner*, 54 N. Y., 360. That was a case where the agent required 12 per cent. interest on the loan. The note was for $200, the amount actually loaned drawing 7 per cent. interest. The borrower afterwards paid to the agent $10, being the excess beyond the lawful interest which he agreed to pay. While it was said by the court as already noted that *Condit vs. Baldwin* had ceased to be authority for any principle, it was distinctly held that that case had no application, that it was only where the agreement to pay the agent was a separate agreement outside of the contract of loan, that the principal could escape the usury—*that the $10 paid the agent "was obviously a part of the contract of loan," and hence the note was usurious.*

In *Juliand vs Grant*, (N. Y.) 4 Alb. L. J., 318,

The action was upon a promissory note for $210 and payable to S., or bearer, one year from date, with interest. The note was made by the defendant for the accommodation of S , the payee, without consideration between them, to enable S. to raise $200 thereon. S. applied to J. L. K., who had money to loan as agent of his father, J. K., and obtained for the note for $210 a loan of $200. The decree found that the ten dollars was wholly for the benefit of the agent. Held, that the case differs from that of *Condit vs. Baldwin*, 21 N. Y., 219, * * as here the excess of legal interest was added to the note and *necessarily* accrued to the lender, whose note it was, and that this was an illegal transaction and that the note, though in the hands of a *bona fide* holder, was usurious and void.

Opinion by Parker, J.

It is here distinctly and soundly held, that "if the lender's agent receive a bonus for himself and include the same in the note to his principal, the note is usurious."

The careful attention of the court is invited to these cases as establishing a principle which cannot be successfully controverted. The case at bar is within this principle there recognized and distinguishable from the "bonus" cases relied upon in the court below.

XII.

There is additional usury in the new securities which is part and parcel thereof, and the original usury is not purged.

Call's testimony as to the securities in suit is this: "After the (first) note became due, Mr. Ormsby came to my house at Algona, and after talking the matter over, he agreed to renew the note *if I would raise it to $11,000. This we did*, and I also paid him at that time $500 interest then due on the first note. This $500 was paid by raising the amount of the note. *The balance of the increase was considered*

as a bonus for extending the note. At the request of said Ormsby I made said new note payable to Henry H. Palmer." (Record, p. 141, Int. 10.)

He also testifies that he did not employ Burnham, Ormsby & Co. to negotiate a loan of $11,000 of Palmer, *nor agree to pay them $500, or any other sum.* (Record, p. 142, Int. 11 and 12.)

He is not contradicted in his statements. THE LOAN AGENT DON'T TESTIFY.

The transaction therefore is simply adding $500 to the principal and interest of the first note, and raising the new note to $11,000, with no agreement on Call's part that the agent shall receive the $500, or anything else. How then does the agent get the $500?

Palmer makes that plain. He deposits the money with Gilman, Son & Co., in New York, *to the credit of Burnham, Ormsby & Co.* (Record, p. 118, Int. 4), and says that "whether Call received the whole or any part, I never had *any knowledge or information.*" (Record, p. 121, Int. 13.) A remarkable method truly, of showing that *Call* paid Burnham, Ormsby & Co. $500 as alleged! It is clear that Palmer himself paid this money to his agents in New York. He did not forward it for loan to Call. He did not care to know whether Call got the money. "Never had any knowledge or information," and never asked for any.

But Palmer *in his bill expressly alleges* that he surrendered the $10,000 note and one interest note of $500 and paid to Burnham, Ormsby and Co. $500 for the $11,000 note, and *that Burnham, Ormsby & Co. kept the $500.* (Record, p. 61.)

The allegation by the plaintiff in his bill is, (Record, p. 61.) that "The said Burnham, Ormsby & Co. *kept and applied* the said $500 * * for their services for negotiating and effecting the loan made by your orator to the said defendant."

There is no pretense or evidence that Call ever knew or heard of this $500 paid by Palmer to his agents.

There is no pretense or evidence that Call paid or went through any form of paying these agents anything; BUT WHAT HE DID DO, WAS TO GIVE HIS NOTE TO PALMER WHICH INCLUDED THIS $500 USURIOUS BONUS TO PALMER HIMSELF.

The conclusion then must be that the $500 bonus is part and parcel of the contract for the $11,000 note—is in the note itself and inseparable from it. It was put in as a consideration for extending the loan in addition to 10 per cent. interest. It was and is usury in its most flagrant form. There was no separate agreement, or agreement of any kind to pay the agent $500 for his supposed services, and no payment of such sum by Call directly or indirectly. THE AGENT RECEIVED THIS USURIOUS BONUS DIRECT FROM HIS PRINCIPAL. The case is within *Algur vs Gardner*, *supra*, but much stronger than that, for there the borrower himself did make a separate payment of the bonus to the agent.

The distinction between this case and the "bonus" cases, where upon a certain agreement with the agent to pay him, and where the borrower in fact did pay him either from the loan after actually receiving it, or more usually in some separate and distinct manner, is too obvious to require further comment.

Because the courts have held that if the borrower agrees to pay the agent a bonus and pays him, it is not usury as to the principal. Will it now be held that where there is *no agreement* by the borrower to pay the agent anything, and *no payment by the borrower*, the agent may contract for $500 of usury in the note, include it in the note, and still the note will not be tainted with the usury which is inseparable from it? In such case there being usury *in the note*, how can the holder be protected when he would not be if he had purchased the same note *bona fide*?

XIII.

CONCLUDING POINTS.

This is not a question of what Palmer will lose. Burnham,

the original rapacious usurer, will doubtless have to disgorge if the plea is sustained. He is confessedly good, and Palmer's remedy against him is clear. Who ought to be protected, Call, or the extortioner, Burnham?

If the plea is not sustained Call must actually pay up to date of decree on a loan of $8,000, in addition to 10 per cent. interest, usury as follows:

On first note	$2,000
Interest at 10 per cent., seven years	1,400
Second note	500
Interest at 10 per cent., four years	200
Total	$4,100

More than 50 per cent of the original loan will thus be taken from him in addition to the highest rate of interest allowed by law. It is rarely, in these latter days, that such rank usury and merciless extortion is sought to be enforced in a court of justice. It is respectfully submitted on the part of defendant that the effort to do so in this case can not be successful

XIV.

The decree below should be reversed. The plea of usury should be sustained and decree entered in favor of Palmer for $4,950 only, without interest, attorney's fees or cost, this sum $4,950 being the amount of the actual loan left unpaid after deducting from the actual loan of $8,000 the $3,050 which has been paid. (Record, pp. 61, 67 and 69.)

1. By Section 2080, Code of Iowa, 1873, where the plea of usury is sustained "the plaintiff shall have judgment for the principal without either interest or cost."

The settled construction of this provision by the Supreme Court of Iowa is,

That where the contract was usurious, all payments are to be deducted from the actual loan, and the plaintiff is to have

judgment for the balance, without interest or cost, and defendant to have judgment for cost.

Smith vs. Cooper et al., 9 Iowa, 376.

Garth vs. Cooper 12 Iowa, 364.

Kurz vs. Holbrook, 13 Iowa, 563.

Attorney's fees are to be taxed as cost and cannot be recovered.

Miller vs. Gardner, 49 Iowa, 234.

In *Smith et al. vs. Cooper et al.*, 9 Iowa, 383,

The court say :

"The contract is entire, and if money has been paid upon it, it should be applied to the discharge of that which the party was legally bound to pay, not that which was illegal and usurious."

Again, p. 388 :

"The account of the contract is that due from time to time after the application of the several payments. * * * If half of the valid debt is paid, then the other half is the amount of the contract, according to the spirit, and, as we believe, the letter of the statute."

In *Kurz vs. Holbrook*, 13 Iowa, 563,

The court say :

"Whatever payments were made, the law applies them in liquidating the amount legally due."

Deducting, therefore, from the actual amount loaned, $8,000, the actual payments made, which by the bill and answer amount to $3,050 (Record, pp. 61, 67 and 69), and which are not to be allowed as interest, but go to reduce the actual loan of $8,000, there remains unpaid the sum of $4,950, for which only without interest or cost Palmer is entitled to have decree.

2. The amount of forfeiture to the school fund if the case presented proper parties and pleadings would be $4,069.60, to Nov. 28, 1879, the date of the decree, computed by the rule established by the Supreme Court of Iowa, in

Smith vs. *Cooper*, 9 Iowa, 383, and other cases.

Under the rule in *Smith vs. Cooper*, the computation is:

Ten per cent. per annum for 6 months on	$8,000	$400 00
Paid by Call, May 1, 1873	500	
Ten per cent. per annum for 6 months on	7,500	375 00
Paid by Call, Nov. 1, 1873	500	
Ten per cent. per annum for 6 months on	7,000	350 00
Paid by Call, May 1, 1874	500	
Ten per cent. per annum for 6 months on	6,500	325 00
Paid by Call, Nov. 1, 1874	500	
Ten per cent. per annum for 6 months on	6,000	300 00
Paid by Call, May 1, 1875	500	
Ten per cent per annum for one year on	5,500	550 00
Paid by Call, May 1, 1876	550	
Balance unpaid	$4,950	
Ten per cent. per annum on $4,950 from May 1, 1876, to Nov. 28, 1879		$1,769 60
Total forfeiture		$4,069 60

But there is no basis of parties or pleadings for the entry of any decree in favor of the school fund.

It would most assuredly, in the absence of proper parties and pleadings, be an unheard of thing for this court, *sua sponte*, to render any decree whatever as to a forfeiture and to enforce a penalty to the school fund, under a State statute; and wholly contrary to the settled equity practice in this court.

Shields vs. Barrow, 17 How., 141.

3. The record shows that the decree was enforced for the amount of $16,652.77. (Report of Sale, Record, pp. 96, 97, and 98.)

Writ of restitution should therefore issue against Palmer for the excess of $16,652.77 above the $4,950, for which only Palmer was entitled to decree, viz: for restitution for the sum of $11,702.77, with interest at 6 per cent. per annum,

from Feb. 28, 1880, the time when the excess was received, (Record, p. 100) and costs of this appeal

4. Interest on the amount of the restitution would be fixed at 6 per cent. per annum by Par. 4, Sec. 2077, Code of Iowa, 1873, which is:

"The rate of interest shall be 6 cents on the hundred, by the year, * *

4. On money received to the use of another and retained beyond a reasonable time, without the owner's consent, expressed or implied."

Interest would also be allowed on the general ground stated in Pars. on Cont., Vol. III., 102, 7 Ed., as follows:

"This interest is allowed for money withheld * * as damages for default in retaining money which belongs to another."

A court of equity would also have, of course, an inherent power to add interest in such case as the present in issuing a writ of restitution.

5. The rule as to a writ of restitution is laid down in *Bank of the United States vs Bank of Washington*, 6 Pet., 17,

Where the court say:

"On the reversal of the judgment, *the law* raises an obligation in the party to the record who has received the benefit of the erroneous judgment to make restitution to the other party for what he has lost. * * Sometimes this is done by writ of restitution, *when the record shows the money has been paid and there is a certainty as to what has been lost.*"

THIS IS PRECISELY THE CASE HERE.

So the decree below should be reversed, and decree in favor of Palmer for $4,950, without costs, entered and adjudged satisfied, and a writ of restitution against Palmer issued in favor of Call for $11,702.77, with interest at 6 per cent. per annum, from Feb. 28, 1880, and costs of this appeal.

WHITING. S. CLARK,
JO. HARRY CALL,
Counsel for Appellant.

The recent case of Meers vs. Stevens 106 Ill. 549 can not be distinguished from the case at bar.

S. borrowed money of M. through R. his agent. The agent deducted four per cent. as his commissions and paid over the balance to S. In a suit upon the note and mortgage, the Supreme Court of Illinois unanimously *held* that the transaction was usurious. There was no evidence in the case showing that M. had actual knowledge that R. had retained any part of the money as his commission. In the case at bar, the testimony of Palmer and his answer show that Burnham, Ormsby & Co., had been his agents *for a number of years* and acted for him in procuring the renewal loan in suit, and that *B. O. & Co. kept $500 of the original money for which Call had given his note.*

And this is the only compensation which B. O. & Co. received for their services.

There is no pretense that Palmer even supposed or expected that Call was to receive this $500.

In the very recent case of Magill vs. Mercantile Trust Co. 81 Ky. 129, M. borrowed $3,500 and subsequently increased it to $5,000, and gave his renewal note and mortgage for $5,000 to the Trust Co. M. paid $87.50 to the agents of the Trust Co. as commission on the first loan. It did not appear that the Trust Co. had knowledge that their agents kept any part of the money as commission. This was held usurious by a united court.

This case can not be distinguished from the case at bar, except that in the case at bar the usurious exactions were enormous and Palmer does not even pretend that Call was to receive all of the money for which he gave his note and mortgage.

APPENDIX.

Chapter 72, Title XIII., of the Revision of Iowa of 1860, on the subject of usury, which governs the contracts in this suit, being the same as Chapter 2, Title XIV., of the Code of 1873, is contained in Sections 2075 to 2081, inclusive, of the Code of 1873, and are as follows, to-wit:

SECTION 2075. The money of account of this state is the dollar, cent, mill, and all public accounts and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

SEC. 2076. The above provision shall not in any manner affect any demand expressed in money of another denomination, but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

SEC. 2077. The rule of interest shall be six cents on the hundred by the year, on:

1. Money due by express contract;
2. Money after the same becomes due;
3. Money lent;
4. Money received to the use of another, and retained beyond a reasonable time without the owner's consent, expressed or implied;
5. Money due on the settlement of matured accounts from the day the balance is ascertained;
6. Money due upon open accounts after six months from the date of the last item;
7. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated. In all of the cases above contemplated parties may agree in writing for the payment of interest not exceeding ten cents on the hundred by the year.

SEC. 2078. Interest shall be allowed on all moneys due on judgments and decrees of any competent court or tribunal, at the rate of six cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered; in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding

ten cents on the hundred by the year, which rate must be expressed in the judgment or decree.

SEC. 2079. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum of value for the loan of money, or upon contract founded upon any bargain, sale, or loan of real or personal property than is in this chapter prescribed.

SEC. 2080. If it shall be ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or property, the same shall work a forfeiture of ten cents on the hundred by the year upon the amount of such contract, to the school fund of the county in which the suit is brought, and the plaintiff shall have judgment for the principal sum without either interest or cost. The court in which said suit is prosecuted, shall render judgment for the amount of interest forfeited as aforesaid against the defendant, in favor of the State of Iowa for the use of the school fund of said county whether the said suit is contested or not; and in no case where unlawful interest is contracted for, shall the plantiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not.

SEC. 2081. Nothing in this chapter shall be so construed as to prevent the proper assignee, in good faith and without notice, of any usurious contract, recovering against the usurer the full amount of the consideration paid by him for such contract, less the amount of the principal money, but the same may be recovered of the usurer in the proper action before any court having competent jurisdiction.

116-98

OCT 28 1885
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 67.

ASA C. CALL, APPELLANT,

vs.

HENRY H. PALMER.

Appeal from the Circuit Court of the United States for the District of Iowa.

BRIEF FOR APPELLEE.

M. F. MORRIS,
Of Counsel for the Appellee.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1885.

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vs.

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Appeal from the Circuit Court of the United States for the District of Iowa.

BRIEF FOR APPELLEE.

I.

STATEMENT.

This is a suit to foreclose a mortgage of lands in Palo Alto county, in the State of Iowa. The sole defence is usury.

The suit was originally instituted in the State court for the county, but was removed to the Federal court, where an amended petition was filed (Record, p. 53) and the case virtually recommenced. The facts are so fully and yet so succintly stated in the opinion of the circuit court (Record, p. 148) that no further or other statement is deemed necessary.

The decree below was for foreclosure. The defendant appealed, but failed to perfect his appeal (Record, pp. 74–94,) and the mortgaged property was sold. (Record, pp. 94–100.)

The proceeds of sale ($15,835) amounted to less than the mortgage debt and costs ($16,652.77), and a personal decree or judgment was rendered against the defendant for the residue ($817.77,) and a general execution ordered to issue therefor. (Record, p. 100). This order was subsequently countermanded on the ground that a part of the mortgaged property, consisting of two lots, for which there had been no bidders, had not been sold; and the court directed that no execution should issue until further order. (Record, p. 101.) No further order was ever made, and the prohibition remained in force.

From the final decree of the court it would seem that an appeal was taken. At all events, on November 7, 1881, an appeal bond was filed, and subsequently, on August 2, 1882, a citation was issued. (Record, pp. 101, 154.) In the intervening time, however, on the 25th of March, 1882, the appellant and appellee solemnly compromised their controversy, and the appellant voluntarily paid, and the appellee received, the sum of $500 in full settlement and satisfaction of the decree, and in discharge of all claims and demands of the appellee against the appellant, and the satisfaction was formally entered upon the record. (Record, p. 147). Yet, notwithstanding this settlement, the appellant had his citation issued, and persists in prosecuting this appeal.

II.

Brief of Argument.

1.

It is difficult to see why, after a voluntary settlement and satisfaction of the decree against him, the appellant should persist in prosecuting his appeal. Clearly he has no standing in this Court, and his appeal should be dismissed. And in dismissing it, it would be no more than just that the Court should impose on him, if it can be done, the penalty which it is entitled to impose for vexatious appeals.

2.

But if the case is to be heard upon its merits it is respectfully submitted that the claim is not such as to commend itself to this Court as being either an honorable or an equitable one.

The appellant gave his promissory note to the appellee with a mortgage to secure it. He now says there was usury in the transaction. The note was for $11,000. This was made up of a prior loan of $10,000, accrued interest upon it amounting to $500, and cash amounting to $500. (Record, p. 18.) It is objected that there was usury, 1st, in the original loan of $10,000, and, 2d, in the fact that the cash payment of $500 was appropriated by an agent for the payment of his services in negotiating the loan. (Record, pp. 68, 141, 142.)

In reference to the latter point it may be sufficient to say that the agent to whom the bonus of $500 was paid is conclusively shown to have been the agent of the appellant and not of the appellee. This is proved by the testimony of the appellant himself. (Record, p. 143.) And it is shown that the appellee never had any benefit of this bonus, directly or indirectly. (Record, p. 122.)

In regard to the allegation that the original note for $10,000 was tainted with usury, it appears that this note was executed by the appellant to A. C. Burnham, either as principal or as agent for one Mrs. Davison, and that it was subsequently indorsed for full value to the appellee. Of the $10,000, however, the appellant received only $8,000, the firm of Burnham, Ormsby & Co., through whom the loan had been negotiated, having charged him $2,000 for their services. (Record, pp. 22, 118, 139.) Of this charge neither Mrs. Davison nor the appellee had any knowledge whatever. (Record, pp. 23, 36, 37, 118.) A reckless charge is made by the appellant in his answer to the appellee's bill of complaint (Record, p. 66) that the appellee's holding is merely a cloak for Burnham. And

a similar charge, that Burnham, Ormsby & Co. were agents for the appellee and not for the appellant, is made, and insisted upon in the appellant's testimony given on his own behalf. (Record, p. 138.) To sustain the former charge not a particle of proof is even attempted to be given, and the charge itself is shown by the appellee to be utterly false. The glaring falsehood of the second charge was demonstrated by the production of the appellant's written request in 1872 to the firm to procure him the first loan, and his written request in 1875 to procure him the second loan. (Record, pp. 124, 126.)

3.

The contract in this case is, by the express agreement of the parties, to be governed by the laws of Iowa. (Record, p. 8, 108.) Such would be the result in any event, as the contract was entered into in the State of Iowa. The provisions of the laws of that State bearing upon the subject of interest and usury, so far as this case is concerned, are as follows; and they are from the code of that State.

Code of Iowa of 1873, title 14, chap. 2, sec. 2077:

The rate of interest shall be six cents on the hundred by the year. * * * In all of the cases above contemplated, parties may agree in writing for the payment of interest not exceeding ten cents on the hundred by the year.

SEC. 2079. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum of value for the loan of money, or upon contract founded upon any bargain, sale, or loan of real of personal property than is in this chapter prescribed.

SEC. 2080. If it shall be ascertained in any suit brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or property, the same shall work a forfeiture of ten cents on the hundred by the year upon the amount of such contract to the school fund of the county in which the suit is brought, and the plaintiff shall have judgment for the principal sum without either interest or costs. * * *

SEC. 2081. Nothing in this chapter shall be so construed as to prevent the proper assignee in good faith and without notice of any usurious contract recovering against the usurer the full amount of the consideration paid by him for such contract less the amount of the principal money; but the same may be recovered of the usurer in the proper action before any court having competent jurisdiction.

SEC. 2082. Notes * * * are negotiable by indorsement or delivery in the same manner as inland bills of exchange, according to the custom of merchants.

SEC. 2084. Bonds, due bills, and all instruments in writing by which the maker promises to pay to another without words of negotiability a sum of money, * * * are assignable by indorsement thereon, or by other writing; and the assignee shall have a right of action in his own name subject to any defense or counter-claim which the maker or debtor had before notice of his assignment.

Now, the pretense of the appellant is, that he dealt directly with Burnham; that the transaction between him and Burnham was usurious; that Mrs. Davison was not known in the matter; and that the note was transferred to the appellee as a blind to evade the statute of usury.

That the money invested was the money of Mrs. Davison, and that she gave to Burnham the $10,000, which the latter invested in the loan to the appellant, is not to be questioned. It is proved beyond the possibility of a doubt, (Record, p. 23, 36;) and there is no testimony to the contrary. It does not matter, then, whether Burnham was the agent of the appellant to negotiate the loan or the agent of Mrs. Davison to lend the money, the transaction was for the benefit of Mrs. Davison; the note was her note; and she is not chargeable with the alleged usury.

In the case of U. S. Bank *vs.* Waggoner, 9 Peters, 378, this court said, that in order to render illegal on the ground of usury a contract legal upon its face "there must be an intent to take a illegal interest, or, in the language of the law, a corrupt agreement to take it." And again, in the same case, it said: "The uniform construction in England has been, and

it is equally applicable here, that to constitute usury within the prohibitions of the law there must be an intention knowingly to contract for or to take usurious interest." See also—

Lloyd *vs.* Scott, 4 Peters, 205.
Condit *vs.* Baldwin, 21 N. Y., 219.
Jones *vs.* Berryhill, 25 Iowa, 289.

This is unquestionably the law. Now, under the testimony in this case, neither Mrs. Davison nor the appellee can be charged with any intent or corrupt agreement to take illegal interest. Neither of them took any illegal interest. Each paid the full amount of the note. (Record, pp. 23, 36, 119.) The bonus of $2000 for the first loan, and of $500 for the second loan, confessedly went to the firm of Burnham, Ormsby & Company; and neither Mrs. Davison nor the appellee had any knowledge whatever that such charges had been made, or such bonus paid.

But is not the knowledge of the agent chargeable to the principal?

Besides, the fact, which is incontrovertibly proved, that Burnham, Ormsby & Company were never at any time the agents either of Mrs. Davison or of the appellee, but that they were, on the contrary, the agents of the appellant himself, (Record, pp. 124, 126, 17, 36,) it is judicially settled beyond question at the present day, that, if an agent in good faith makes a loan for another, and without the knowledge or consent of his principal, and for the agent's own benefit exacts more than legal interest, the intent of the agent is not imputed to the principal, and the transaction is not thereby rendered usurious.

Condit *vs.* Baldwin, 21 N. Y., 219.
Bell *vs.* Day, 32 N. Y., 165.
Barretto *vs.* Snowden, 5 Wendell, 181.
Conover *vs.* Van Mater, 18. N. J., Eq., 486.
Meier *vs.* Ins. Co., 16 N. J., Eq., 537.
Rogers *vs.* Buckingham, 33 Conn., 81.

Dagnel *vs.* Wigley, 11 East, 43.
Salartee *vs.* Melville, 7 Barn. & Cress., 427.
Gokey *vs.* Knapp, 44 Iowa, 32.
Wyllis *vs.* Ault, 46 Iowa, 46.
Brigham *vs.* Myers, 51 Iowa, 397.

The reason is that the principal derives no advantage from the usury, and has not authorized the agent to violate the law; and it is not to be presumed to have been within the scope of his agency to enter into an illegal transaction.

The case of Barretto *vs.* Snowden (5 Wendell, 181) above cited is almost precisely analogous upon this point to the present case. There, too, an agent employed to loan money or to borrow it, charged a commission for himself, took the note in his own name as payee, and subsequently delivered it to the lender, as the note in question here was delivered to Mrs. Davison, and the principal's name was not disclosed in the transaction. The supreme court of New York, citing with approval the decision in the case of Dagnell *vs.* Wigley, (11 East, 45,) said that the nominal payee was merely a agent; that he was not a party to the loan; that he advanced nothing, and the person who did advance the money received nothing more than legal interest; and that there was no corrupt agreement between the plaintiff and the defendant.

The decision in the case of Gokey *vs.* Knapp, (44 Iowa, 32,) is precisely to the same effect; and being the solemn adjudication of the court of last resort of the State of Iowa upon the construction and effect of the laws of that State, it would seem that it ought to have a controlling effect in this case, especially as the principle there enunciated has been adhered to in all its subsequent decisions.

As the court below has rightly remarked, in its opinion, it is scarcely consistent with sound morality to permit the borrower and the agent, it matters not whether he is the agent of the lender or of the borrower, to enter into an il-

legal combination to defraud the lender, who is the only one of the three that is ignorant of the violation of the law.

4.

But it is contended that Burnham was the principal and not an agent in the first instance.

The proof is conclusive that he was in fact an agent of Mrs. Davison. He so testifies himself, and so does Mrs. Davison, and the note and mortgage were held by him for the benefit of Mrs. Davison and under her control. And most undoubtedly, in the contemplation of the usury laws, the act of an agent in taking in his own name a note given for the loan of his principal's money does not make him a principal.

5.

But even if Burnham was the principal and not an agent in the transaction, that does not justify a plea of usury as against the complainant in this case.

This note was passed to a *bona fide* purchaser, in due course of business for a full valuable consideration, without any notice whatever of illegality or infirmity in the paper; and under the general mercantile law the right of such a *bona fide* holder to recover against the maker the full amount of the note is not to be questioned in this Court. Is there any statutory provision that derogates from the general law on this point?

The English statute of James I, and the statutes of several of the States of the Union, provide that negotiable paper, tainted with usury, shall be absolutely void in the hands of any and all persons. The statute of Iowa, which has been cited, more in accordance with modern legislation upon this subject, does not declare any usurious contract to be void, but merely imposes a penalty upon it. At the utmost it only makes the contract voidable between the original parties. It leaves the rights of *bona fide* holders for value and indorsees to be determined by the general principles of the

law merchant. Now, it has been repeatedly and in numerous cases adjudged by this Court that "a party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world."

Hotchkiss *vs.* National Bank, 21 Wall., 359.
Murray *vs.* Lardner, 2 Wall., 110.
Goodman *vs.* Simonds, 20 How., 343.

Even when the statute makes a usurious negotiable instrument void in the hands of any person whomsoever, it has been repeatedly and uniformly held that when, as in this case, the maker of an alleged usurious contract makes it the consideration of a contract entirely new, as being with a third person, not a party to the original contract, or to the usury paid or reserved upon it, or as combining other parties and considerations, and not being a contrivance to evade the statute, the transaction is neither illegal nor void.

Cuthbert *vs.* Haley, 8 Term Rep., 309.
Bearce *vs.* Barston, 9 Mass., 48.
Brown *vs.* Waters, 2. Md. Ch., 209.
Powell *vs.* Waters, 8 Cowen, 669.
Kent *vs.* Walton, 7 Wendell, 257.
Dix *vs.* Van Wyck, 2 Hill (N. Y.), 522.
Smedberg *vs.* Simpson, 2 Sandf., 87.
Smedberg *vs.* Whittlesey, 3 Sandf., 323.
Houghton *vs.* Payne, 26 Conn., 396.
Campbell *vs* McHarg, 9 Iowa, 357.
Wendlebone *vs.* Parks, 18 Iowa, 544.

6.

Reliance seems to be placed on a certain section of the code of Iowa (Sec. 2081) hereinbefore cited, as necessarily implying that an assignee in good faith can recover only from the usurer and not from the borrower.